

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1327

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

-vs-

WILLIAM COOPER,

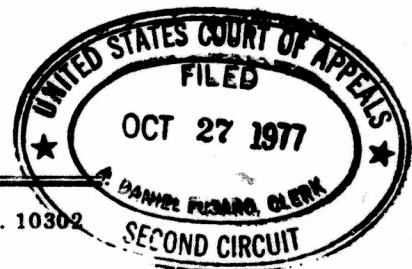
Defendant-Appellant.

*On Appeal From The United States District Court
For The Eastern District Of New York*

APPELLANT'S APPENDIX

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Form No. 100

CRIMINAL DOCKET

74CR 333

INDEXED 1 PLATT, J.
BARTELS J.

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.:

AUSA Shanley

VS.

Ira Gross

WILLIAM COOPER

299 Broadway, NYC.

Canal 6-5521

CLOSED

For Defendant: Frederick H. Block

295 Madison Ave - N.Y. 10017

Did transport in i.c.c. falsely made & forged checks, etc.

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
4-29-74	Before DOOLING J - Indictment filed.
5-10-74	Letter to Special Attorney Richard Shanley from Frederick Block, esq. filed- adjournment of case to 5-28-74 at 9:30 A.M.-
5-28-74	Before BARTELS J - case called - deft & counsel Frederick Block present - deft enters plea of not guilty - trial set down for 9-23-74 at 10:00 am. - Bail set at \$20,000 PRB.
7-9-74	Magistrates file inserted into CR file
7/12/74	Before Platt, J.-Case called-Set down for trial on 9/9/74
8-5-74	Bill of Particulars and Discovery filed
8-6-74	Notice of Readiness for Trial filed.
9-9-74	Before Platt, J - case called - adjd to Oct. 25, 1974 (to set date for trial)

74CR 333

DATE	PROCEEDINGS
12-74	By PLATT,J.- Order filed that the deft present himself to the U.S.Public Health Service Hosp., Staten Island, on 10-4-74 at 12:30 P.M. to undergo a medical examination to determine whether the deft is capable to stand trial- a report of said examination to be submitted to the parties on or before 10-15-74
10-16-74	Before PLATT, J - case called - deft present with counsel Frederick Block - Pre Trial Conference held and adjd to Nov. 15, 1974
0/25/74	Before PLATT,J.- Case called- XXXX Case adjd to 11/15/74 at 10:00 A.M.
1-15-74	Before PLATT, J - case called & adjd to 2-28-75 (to set trial date)
1-22-75	Before PLATT, J - case called - hearing on doctor's report held and adj without date pending medical report - deft present with counsel F.Block.
2/17/75	Before PLATT,J.- Case called- Adjd to 3/14/75
3-14-75	Before PLATT, J - case called - deft present with counsel Mr.Block - adjd to Sept. 5, 1975 for status report.
9-5-75	Before PIATT, J - case called -deft & counsel F.Block present - adjd to May 7, 1976 (status report)
/76	Before PLATT,J.- Case called- adjd to 7/16/76 on consent
/16/76	Before PLATT, J. - Case called. Deft & Counsel present. Govt reports that in its opinion, based on medical report of 5/13/76, Deft is able to stand trial. Hearing set down for 7/30/76 at 2:00 p.m. Excludable Delay Code - N, Start Date 7/10/76. Limited to 7/10/76.
9-27-76	Before Platt, J - case called - deft & counsel present - hearing pursuant to T-18, U.S.C. Sec. 4244 ordered and begun - hearing concluded- decision reserved - status report set down for Oct. 22, 1976
10-20-76	Stenographers transcript filed dated 9-24-76 XX XX
11/5/76	Before PLATT, J. - Case called. Deft & Counsel present. Govts motion for an examination pursuant to T-18:4244 argued - decision reserved. 11/5
3.77	By Platt, J.- Order filed that the deft. undergo medical examination and that a report of his examination be submitted to the parties and the Court as soon as possible.
-15-77	Before Platt, J - case called - deft & atty Frederick Block present - defts motion for hearing re ability to stand trial - Granted - hearing set down for 3-18-77 at 2: PM or 3-25-77 at 2 PM.
123/77	Before PLATT,J.- Case called. Deft & Counsel present. Hearing on defts comj to stand trial resumed. Hearing continued to 4/29/77 at 2:00 p.m. court d

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs

continued.

WILLIAM COOPER

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Yr.

Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELA			
	(Document No.)	(a)	(b)	(c)	(d)
4/18/77	that deft be re-examined 4/18/77 Sten's transcript dtd 3/23/77 filed. JLJ				
5/2/77	Before Platt, J-case called-Deft & counsel present The court finds that deft is capable of standing trial and assisting in his defense; therefore defts application that he be declared incompetent to stand trial by reason of physical disability is denied- trial set down for 5/9/77.JLJ				
5-5-77	Transcript filed dated 4-29-77				
5-5-77	Stipulation filed consenting to substitution of counsel (Ira Gross, Esq. in place of Frederick Block, Esq.				
5-4-77	Before Platt, J - case called - defts motion for substitution of counsel granted . Ira Gross is substituted for Frederick Block on stipulation and on condition that deft make no motion for an adjournment on the grounds that he has retained new counsel.				
5-8-77	Trial set down for May 9, 1977 at 9:30 am. By Platt, J- Order filed consenting to substitution of attorney on conditions stated on record on May 4, 1977. (signed by Judge Platt on 5-5-77 received in Clerks office 5-8-77 for filing)				
5-10-77	Before Platt, J - case called - deft & atty Ira Gross present. The Court's ruling as to defts capacity to stand trial is clarified and the case respectfully referred to Ch.Judge Mishler for trial.				
5-10-77	Before MISHLER J - case called - deft & atty present - On motion by the Govt count 1 is severed from the trial. For the purpose of the trial count 2 will be count 1 and count 3 will be count 2. Trial ordered and begun - Jurats selected and sworn - trial contd to May 11, 1977.				
5-11-77	Before MISHLER, CH J - case called - deft & counsel present - trial resumed - Govt rests - motion by deft to dismiss the indictment is denied - Deft rests - trial contd to May 12, 1977				
5/12/77	Before Mishler, Ch J case called-deft & counsel present trial-resumed-court charges jury-at 10:50am the jury retired for deliberation-at 4:50pm the jury returned and rendered a verdict of guilty on counts 2 & 3- jury polled-jury discharged-trial concluded-motion by the deft to vacate the verdict is denied-bail conditions contd-sentencing adjd w/o date.JLJ				
5/13/77	By Mishler, Ch J Order dtd 5/12/77-order of susten- ance/jlj				

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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

WILLIAM COOPER

74-CR-

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE D		
		(a)	(b)	(c)
7.15.77	Before Mishler, J.- Case Called. Deft. & Counsel present. Deft. is sentenced to imprisonment for a period of 3 years on each of counts 2 and 3, the sentences imposed to run concurrently. Notice of appeal to be filed by the Clerk. Bail continued pending appeal. ON motion of David Ritchie, Count one of the indictment is dismissed.			
7.15.77	Judgment and Commitment filed. Certified Copies to Marshal and Probation.			
7.15.77	Notice of Appeal filed.			
7.15.77	Docket entries certified and mailed to the Court of Appeals with duplicate copy of Notice of Appeal and Original copy of Form A.			

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

-vs-

WILLIAM COOPER,

Defendant
-----x

74 CR 333

INDICTMENT

18 U.S.C. §2314

BARTELS, J.
4-29-74

THE GRAND JURY CHARGES:

COUNT I

On or about the 15th day of October, 1973, the defendant WILLIAM COOPER, with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce from the State of New York in the Eastern District of New York, to the State of Michigan a falsely made and forged security, that is, a bank counter check, knowing the same to be falsely made and forged, said counter check being in the amount of \$12,465.00 and drawn on the City National Bank, Detroit, Michigan, and payable to Franklin Liquidators Corporation.

(Title 18, United States Code, Section 2314)

COUNT II

On or about the 18th day of October, 1973, the defendant WILLIAM COOPER, with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce from the State of New York, in the Eastern District of New York, to the State of Wisconsin, a falsely made and forged security, that is, a bank counter check, knowing the same to be falsely made and forged, said counter check being in the amount of \$15,650.00 and drawn on the First Wisconsin National Bank, Milwaukee, Wisconsin, and payable to Franklin Liquidators Corporation.

(Title 18, United States Code, Section 2314)

COUNT III

On or about the 24th day of October, 1973, the defendant WILLIAM COOPER, with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce from the State of New York, in the Eastern District of New York, a falsely made and forged security, that is, a bank counter check, knowing the same to be falsely made and forged, said counter check being in the amount of \$15,375.00, and drawn on the First National Bank of Chicago, Illinois, and payable to Franklin Liquidators Corporation.

(Title 18, United States Code, Section 2314)

A TRUE BILL

FOREMAN

EDWARD J. BOYD 5th
UNITED STATES ATTORNEY

M O R N I N G S E S S I O N

(May 12, 1977)

(The following takes place out of the presence of the jury.)

THE COURT: Case on trial.

Both sides ready?

MR. RITCHIE: Yes, your Honor.

MR. GROSS: Yes, your Honor.

THE COURT: I will try to remember that counts two for these purposes is count one and count three is count two.

I understand I slipped up for one moment when talking to the jury.

MR. GROSS: Yesterday you made a statement you will charge the jury with respect to the defendant's right not to take the stand. And it's just as a reminder.

THE COURT: I have that. I make a stronger charge in just his right not to take the stand. I think you will be satisfied with it.

All right, seek the jury.

(The jury enters the courtroom and the following takes place in open court and in the presence of the jury.)

(THE COURT CHARGES THE JURY AS FOLLOWS:)

THE COURT: Mr. Foreman and ladies and gentlemen of the jury:

7A

Charge

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2 We have reached that point in the trial where it
3 becomes my duty to charge you on the applicable law. A good
4 place to start is to talk about the role of each party
5 who participates in a jury trial plays.

6 First we have the lawyers. They are adversaries.
7 And a trial is called an adversary proceeding. It means
8 that the lawyers take opposing positions on the contested
9 issues in the case.

10 And this case was argued before you. One of the con-
11 tested issues is the question of criminal intent. The
12 Government argues that they proved beyond a reasonable doubt
13 that the defendant knew that the subject checks were falsely
14 made and that they were deposited with intent to defraud.

15 The defendant argues that the Government failed to
16 prove that issue beyond a reasonable doubt.

17 So there you have the adversary proceeding. There
18 are other issues in the case, of course.

19 The lawyers represent clients. They are protagonists
20 and they represent positions. And the Court and jury, on
21 the other hand, are dispassionate and objective. We have
22 no interest in the issues as such. We take no position.

23 As between the Court and jury, there is a clear line
24 of demarcation. The jury is the sole judge of the facts.
25 You and you alone determine what happened. You determine

Charge

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2 the fact issue, for example, as to criminal intent.

3 The Court, on the other hand, is the sole judge of
4 the law. I made rulings during the trial and the lawyers
5 were bound by those rulings. I am charging you as to the
6 law, and you have the obligation to accept the law as I
7 charge it. You may disagree with the law. You may think
8 it is defective in any number of respects. But it is not
9 for you to judge the law. It is for you to accept the law.
10 It is for you to judge the facts. And just as I am bound
11 to accept your factfindings, so you are bound to accept
12 the law as I charge it.

13 The defendant is presumed to be innocent of both
14 charges in this indictment.

15 Now, there are two charges, and it is as if there were
16 two trials. You judge the evidence against each charge and
17 see if the Government proved the guilt as to each charge
18 beyond a reasonable doubt.

19 I will probably use "charge" or "charges", but whether
20 I use it in the singular or plural, it refers to both
21 unless I specify it refers to one charge or the other.

22 The presumption of innocence means that you are re-
23 quired to conclude at the outset of the trial and all during
24 your deliberations that the defendant is innocent of the
25 charges in this indictment. And that presumption is a

Charge

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time honored presumption in the Anglo-American Law. It's a strong presumption and it is enough to acquit a defendant.

The presumption is overcome only if the Government proves the guilt of the defendant by proof beyond a reasonable doubt.

You have heard the term Scotch verdict. In Scotland there are three verdicts: Guilty, not guilty and not proved. In this country there are only two verdicts: Guilty or not guilty; and not guilty includes not proved.

A reasonable doubt is a doubt which a reasonable person has after weighing all the evidence. It is a doubt based upon reason and common sense and experience as distinguished from a doubt based on emotion that arises from a distaste to perform an unpleasant task or a doubt based on pure whim. It is not a vague, speculative or imaginary doubt. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act in a matter of importance to himself or herself.

Proof beyond a reasonable doubt is therefore proof of such a convincing character that you would be willing to rely on it unhesitatingly in the most important and weighty of your own affairs.

The Government's burden is not to prove the guilt of the defendant beyond all doubt, there is a qualifying

Charge

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2 adjective, beyond a reasonable doubt. The Government's
3 burden is not to prove that every bit of evidence offered
4 in the trial is true beyond a reasonable doubt. The bur-
5 den of the Government is to prove all the essential elements
6 of the crime charged beyond a reasonable doubt.

7 I will charge you later on the essential elements
8 of the crime charged.

9 A reasonable doubt may arise from the failure of the
10 Government to produce evidence.

11 The defendant does not have to prove his innocence.
12 On the contrary, the defendant is presumed to be innocent
13 of the accusation contained in the indictment and the
14 defendant may rely on the failure of the Government to
15 prove his guilt.

16 The standard is not based on the number of witnesses
17 or number of documents, but rather on the quality of the
18 testimony offered.

19 What is evidence in this case?

20 Evidence is the sworn testimony of the witnesses,
21 the exhibits that are marked in evidence, facts which have
22 been admitted or stipulated, and facts upon which the
23 Court may have taken judicial notice. And I am not sure
24 whether I took judicial notice of any fact, but if I said,
25 for example, that the 15th day of October, 1973, fell on

Charge

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2 a particular day of the week, that's a judicially noticed
3 fact. It is a fact that is beyond dispute and mere refer-
4 ence to a document would indicate the day of the week.

5 I think it is helpful to charge you on what is not
6 evidence in the case.

7 Statements made by the lawyers in their opening,
8 statements made by the lawyers in their closing or sum-
9 mation is not evidence. They serve a useful purpose. As
10 I indicated to you, the opening is designed to alert the
11 jury to the evidence that is to come so that the jury may
12 be prepared to receive it and better understand it. The
13 closing arguments, on the other hand, is designed to focus
14 on the evidence that the lawyers think is of importance,
15 and to offer you theories of exculpability on behalf of
16 the defendant, and that means theories indicating that the
17 Government has failed to prove guilt beyond a reasonable
18 doubt; and theories of inculpability offered by the Govern-
19 ment which means theories of guilt which in turn means that
20 the Government has proved guilt beyond a reasonable doubt.
21 They are not evidence, but they are helpful aids in
22 arriving at a fair and just verdict.

23 You may reject any and all of the arguments made.
24 If some of the arguments appear to be attractive, I think
25 it's wise that you consider the theories.

Charge

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2 Statements by the Court are not evidence. I stand
3 no higher or in any different position than anybody else
4 participating in this trial.

5 You are to take the evidence from the mouths of the
6 witnesses and the exhibits marked in evidence.

7 Evidence stricken from the record must be disregarded
8 by you because since it is stricken from the record it is
9 no longer part of it and you may not consider it. And
10 just as I have directed the court reporter to physically
11 strike it from his notes, so you are to figuratively strike
12 it from your mind and memory.

13 At times objections were sustained to questions, and
14 you may not speculate on what the answer might have been
15 had the Court permitted the witness to answer. On the
16 same theory, it didn't get into the record and you are not
17 allowed to speculate on what it might have been.

18 Evidence is the method in which a disputed fact is
19 proved or disproved.

20 Evidence is broadly classified as either direct
21 evidence or indirect evidence, which is usually called
22 circumstantial evidence.

23 Direct evidence is the testimony of a witness as to
24 what the witness saw or heard as to the disputed facts.

25 Circumstantial evidence, however, is proof of a

Charge

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2 disputed fact by the jury drawing an inference from the
3 establishment of circumstances from which the inference may
4 reasonably be drawn based on reason or common sense and
5 your own experience.

6 The definition isn't entirely satisfactory, and I
7 think an example would make it more understandable, and I
8 will give you this example.

9 We have a hypothetical, and assume in the hypothetical
10 that this jury is sitting on a personal injury case where
11 the plaintiff, Mrs. A, is suing the defendant, Mr. B,
12 claiming that she was hurt. And as the basis for the
13 action, that the defendant driving his motor vehicle at
14 a particular time and place failed to stop at a stop sign.
15 She claims that he proceeded past the stop sign without
16 stopping. Now, that would be a disputed fact.

17 The plaintiff claims the defendant passed the stop
18 sign without stopping. And the defendant in his general
19 denial saying, no, I stopped and then I proceeded.

20 Let's assume, as we have done at many previous trials,
21 that my courtroom deputy, Mr. Adler was standing on the
22 corner with me at the time having a general talk and dis-
23 cussion.

24 Let's assume I was facing the roadway and in my
25 direct vision was a stop sign.

Charge

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2 Let's assume further, on the other hand, that Mr.
3 Adler had his back to the stop sign.

4 If I were called to the witness stand testifying on
5 that disputed fact, I might say that I was talking with
6 Mr. Adler at the time and place, a stop sign was located
7 on the corner facing the driver as he was coming down the
8 roadway; I noticed a 1977 white Cadillac traveling at
9 70 miles an hour, passed the stop sign without stopping,
10 and strike the plaintiff. Now, that's direct testimony on
11 that disputed issue.

12 If Mr. Adler were called to the witness stand, he
13 couldn't testify directly to that disputed fact, but he
14 might testify to circumstances from which you, the jury,
15 might draw an inference based on common sense and experience
16 that the motor vehicle did indeed pass a stop sign without
17 stopping.

18 If he testified, for example, that he noticed the
19 motor vehicle coming to his right through his peripheral
20 vision, he noticed a white Cadillac traveling about 70
21 miles an hour, and then it passed behind him, and about
22 150 feet later and two or three seconds later he turned
23 to his left and saw that same Cadillac traveling at the
24 same rate of speed and strike the plaintiff, I think you
25 would agree with me that from those circumstances you will

Charge

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2 come to the conclusion that the motor vehicle passed the
3 stop sign without stopping.

4 Now, there you have testimony on the disputed fact
5 from two types of testimony; first the direct testimony,
6 and the other is the circumstantial evidence.

7 The law does not regard one type of evidence as being
8 of better quality than another. At times circumstantial
9 evidence is a better quality. At times direct evidence is
10 a better quality.

11 The law requires the Government to prove the essential
12 elements of the crime charged beyond a reasonable doubt
13 based on both the direct evidence and the circumstantial
14 evidence.

15 It's rarely ever possible to prove criminal intent,
16 which is a state of mind, by direct evidence. It may be
17 proved by circumstantial evidence.

18 You, the jurors, are the sole judges of the credibil-
19 ity of the witnesses, which means the believability of
20 their testimony and the weight that their testimony de-
21 serves. Scrutinize the testimony given in the circum-
22 stances under which each witness testified, and every
23 matter in evidence which tends to show whether a witness
24 is worthy of belief. Consider the witness' intelligence,
25 the motive and state of mind while testifying, in other

Charge

1
2 words, the reason the witness is testifying. Take into
3 consideration the demeanor and manner of the witness while
4 on the witness stand. Did the witness strike you as being
5 truthful? Did the manner in which he testified indicate
6 to you that the witness was lying or telling the truth?
7 Did the witness answer fully? Did the witness attempt to
8 evade answering the questions?

9 Take into consideration the witness' ability to
10 observe the matters as to which he testified, whether he
11 should have impressed you as having an accurate recollection
12 of those matters. Take into consideration the relation
13 that the witness might bear to either side of the case,
14 the manner in which the witness might be affected by the
15 verdict, the extent to which, if any, the witness is
16 corroborated or contradicted by the other evidence in the
17 case.

18 In this case we had Mr. David P. Grimes, an examiner
19 of questioned documents. He testified that certain doc-
20 uments in his opinion were made by the same typewriter.
21 And he testified as to the authorship of questioned
22 documents.

23 The rules of evidence do not ordinarily permit a
24 witness to testify as to opinions or conclusions. An
25 exception to this rule exists as to those whom we call

Charge

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2 "expert witnesses". Witnesses who, by education and ex-
3 perience, have become expert in some art or science, and
4 in this case in the field of questioned documents, may
5 state an opinion as to relevant and material matter, in
6 which they profess to be experts, and may also state their
7 reasons for the opinion.

8 You should consider the expert opinion as you con-
9 sider other testimony in the case. You judge the quality
10 of his testimony by all the tests I just gave you.

11 The law does not compel a defendant in a criminal
12 case to take the witness stand and testify. No presumption
13 of guilt may be raised and no unfavorable inference of
14 any kind may be drawn in the failure of a defendant to
15 testify. The defendant, as previously charged, may rely
16 on the failure of the Government to prove its case. It
17 would be improper for you to discuss the failure of the
18 defendant to testify during your deliberations.

19 Now we turn to the indictment.

20 The indictment is merely the method of bringing the
21 defendant into court to answer charges. The allegations
22 of the counts in the indictment are not to be considered
23 by you as proof. Proof comes through the evidence in the
24 trial, which means the testimony of the witnesses and the
25 exhibits that are marked in evidence.

Charge

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2 You are not to attach any significance to the fact
3 that the indictment is brought in the name of the United
4 States. The prosecution and the defendant are equals in
5 this court. The obligations of the prosecution and the
6 rights of the defendant are not to be reduced because the
7 prosecution is in the name of the United States of America.

8 Now let's turn to the indictment.

9 Count one charges as follows:

10 "On or about the 18th day of October, 1973, the
11 defendant William Cooper with unlawful and fraudulent
12 intent, did transport and cause to be transported in inter-
13 state commerce from the State of New York in the Eastern
14 District of New York, and the State of Wisconsin, a falsely
15 made and false security, that is, a bank countercheck,
16 knowing the same to be falsely made and forged. Said counter-
17 check being in the amount of \$15,650 and drawn on the
18 First Wisconsin National Bank, Milwaukee, Wisconsin, and
19 payable to Franklin Liquidators Corporation, in violation
20 of Title 18, United States Code Section 2314."

21 Count two, "On or about the 24th day of October,
22 1973, the defendant William Cooper, with unlawful and
23 fraudulent intent, did transport and cause to be trans-
24 ported in interstate commerce from the State of New York,
25 the Eastern District of New York, a falsely made and forged

Charge

1 security, that is, a bank countercheck, knowing the same
2 to be falsely made and forged, said countercheck being in
3 the amount of \$15,375.00 and drawn on the First National
4 Bank of Chicago, Illinois, and payable to Franklin Liquid-
5 ators Corporation, in violation of Title 18, United States
6 Code, Section 2314."

7
8 So the charges are identical in both counts one and
9 two. Of course, they are two separate and distinct trans-
10 actions and you must judge each count and determine whether
11 the evidence supports the charge and whether the Govern-
12 ment has proved the count beyond a reasonable doubt.

13 You will note that in both charges the defendant is
14 charged with unlawful and fraudulent intent, and he is
15 charged with knowing that the bank countercheck was falsely
16 made and forged.

17 In every felony there are two ingredients. One is
18 criminal intent, which means state of mind, and that's what
19 the defendant is charged with. He is charged with, unlaw-
20 ful and with fraudulent intent, transporting or causing a
21 check to be transported, and he is charged with knowing
22 that the check was falsely made and forged. That's the
23 transposition of the element of criminal intent into the
24 pertinent language of the charge.

25 The other, that he deposited the check and caused it

1
2 to be transported interstate is the proscribed conduct, the
3 prohibited act.

4 Now, both these charges are based on Section 2314 of
5 Title 18.

6 The Congress defines what is a crime. And most of
7 federal legislation is codified. Title 18 happens to be
8 entitled Crimes and Criminal Procedure. And 2314 in per-
9 tinent part says the following, and you will recognize some
10 of the identical language in the counts of the indictment.

11 It says:

12 "Whoever, with unlawful or fraudulent intent, trans-
13 ports in interstate or foreign commerce any falsely made,
14 forged, altered, or counterfeited securities or tax stamps,
15 knowing the same to have been falsely made, forged, altered
16 or counterfeited, violates this section."

17 As to counts one and count two of the indictment,
18 the Government must prove the following three elements of
19 the crimes charged beyond a reasonable doubt:

20 One, as to count one, the check in the amount of
21 \$15,650 was falsely made;

22 Two, that the accused caused the check to be trans-
23 ported in interstate commerce when the check was transmitted
24 to the First Wisconsin National Bank in Milwaukee, Wisconsin,
25 on or about October 18, 1973. And it must be shown that

he caused it to be transmitted by depositing in his own bank, the South Melville Branch of the Long Island Trust Company;

Three, that the check was caused to be transported unlawfully and with fraudulent intent, knowing the falsity of the check.

The Government must prove all those elements.

As to count two, element one, the first element, that the check in the amount of \$15,375 was falsely made;

Two, that the accused caused the check to be transported in interstate commerce when the check was transmitted to the First National Bank of Chicago, Illinois, on or about October 24th, 1973; and

Three, that the check was caused to be transported with fraudulent intent, knowing the falsity of the check.

Now some definitions might be helpful and I think necessary in understanding both the charge and the statute.

I charge you that a check is a false security if the maker of the check is fictitious.

Fraudulent intent is the essence of the charge in each of the two counts. It is the fraudulent intent that is the element of the crime, not the actual defrauding.

The Government need not prove that anyone lost any money.

22A

Charge

1
2 The Government must prove beyond a reasonable doubt
3 that the accused acted willfully with intent to defraud.

4 To act with "intent to defraud" means to act with
5 specific intent to deceive or cheat, ordinarily for the
6 purpose of either causing some financial loss to another,
7 or bringing about a financial gain to oneself.

8 To act willfully means to act voluntarily and in-
9 tentionally, and with the specific intent to do something
10 which the law forbids.

11 Interstate transportation is the transporting from
12 one state across state lines into another state.

13 And the charge here is that the check was transported
14 from New York State in count one, to the State of Wisconsin;
15 and in count two, the State of Illinois; and that the
16 defendant caused it when he deposited the check and it
17 was then transmitted for collection out of state.

18 An act is done "knowingly" if it is done voluntarily
19 and not through some mistake, accident, inadvertence or
20 negligence.

21 The purpose of adding the word "knowingly" is to
22 insure that no one would be convicted for an act done
23 because of mistake or accident or inadvertence or other
24 innocent reason.

25 I am about to submit the case to you for your

Charge

1
2 deliberation.

3 Each juror must decide the case for himself and
4 herself. You must deal with the evidence. It is improper
5 for any juror to take an intransigent obdurate position and
6 refuse to discuss the case with their fellow jurors.

7 It would be improper for someone to come into the
8 jury room and say, "Here is the way I feel about it, I am
9 not talking to anyone about it. When you come around to
10 my way of thinking we will have a verdict."

11 It is just as wrong for a juror to come into the
12 jury room and say, "Well, I am Good Time Charley. I will
13 get along and go along with whatever you say, and it will
14 be all right with me."

15 The idea is we must have twelve verdicts individually
16 and separately arrived at by all the jurors. When all the
17 jurors have agreed upon the case we have a verdict on the
18 case.

19 During your deliberations you may have reasons to
20 communicate with the Court, and you will do that through
21 your Foreman through the Marshals who will be assigned, who
22 will then give it to me.

23 When I get the note, I will consult with the lawyers.

24 Don't tell me how you stand at any particular time
25 during your deliberations. Don't tell me you're six to six,

Charge

1
2 ten to two or eleven to one. I am not interested. It
3 would be improper for you to disclose how you stand during
4 your deliberations.

5 When you have arrived at a verdict it means unanimous
6 verdict. Just send me a note telling me you have arrived
7 at a verdict. Don't tell me what the verdict is. When I
8 get the note I will bring you into the courtroom and I will
9 ask the Foreman to stand and I will say in effect, "In the
10 case of United States of America against William Cooper,
11 how do you find as to count one?" And you will give me
12 your verdict.

13 I will then ask, "How do you find as to count two?"
14 And you will give me a verdict.

15 And I will turn to juror number 2 and ask if she
16 heard the verdict as rendered by the Foreman and inquire as
17 to whether that's her verdict, and then go on to each
18 juror until I have twelve answers. And if all the answers
19 are the same, then I have the verdict of the case. And
20 that is the first time I have the verdict of the case, when
21 it is rendered in open court.

22 During your deliberations you may want some of the
23 exhibits, you may want to hear some of the testimony. Try
24 to be specific. The court reporter will have to search
25 his notes and I will try to give you what you want. If you

Charge

1
2 you give me the name of the witness or the subject matter,
3 and if you give me both it will be easy to find.

4 As I said, when I get a note I take it up with the
5 lawyers. I want to make sure of what you want to hear. I
6 try not to give you any more than you want to hear, nor do
7 I want to give you any less. Because sometimes there is
8 a dispute between the lawyers as to what you want to hear.
9 The lawyers, being advocates, want to get again before the
10 jury what they think is favorable. So if I answer only
11 the jury's note, I am assured that I am on neutral ground
12 and that's the way I try to be.

13 At this point I will excuse the jurors to take some
14 matters up with the lawyers. Don't start your deliberations.
15 And after I do that, I will give you a supplemental charge
16 and then you will be ready to deliberate on the matter.

17 The jury is excused for a few moments.

18 (The jury leaves the courtroom at 10:43 A.M.)

19 THE COURT: Mr. Ritchie, are there any requests or
20 exceptions?

21 MR. RITCHIE: Yes, your Honor.

22 With respect to the issue of the Court's definition
23 of false making, your Honor's statement was simply that
24 a check is falsely made if the maker is fictitious.

25 I had specifically requested that you charge the

Colloquy

1
2 elements and the definitions of intent to defraud.

3 Is that satisfactory?

4 MR. GROSS: Yes, your Honor.

5 MR. RITCHIE: I would like your Honor to make it
6 clear to the jury that the reason the Court isn't giving
7 a direct yes or no answer to that question is 1 cause it's
8 a fact question.

9 THE COURT: I am not sure that that's true. I will
10 say to them that it may be a fact question and I don't
11 want to trespass on their authority and I can't answer it
12 in the form put, but this may satisfy them.

13 All right?

14 MR. GROSS: Satisfactory.

15 MR. RITCHIE: Yes.

16 THE COURT: Please seek the jury.

17 (The jury enters the courtroom at 1:25 P.M.)

18 THE COURT: You asked for a definition of fraud
19 and intent.

20 Of course, the phrase is fraudulent intent. That's
21 the statutory phrase, whoever had fraudulent intent.

22 And you asked me to answer this question also: If
23 a man deposits a check in his account knowing that the
24 deposit was bad, is this act intent to defraud?

25 First, it isn't proper for me to answer questions.

Charge

1
2 I can charge you on the law and I can read back evidence.
3 If I answer questions, more likely than not I would be
4 giving you my interpretation of what the evidence is and
5 that would be wrong.

6 I am going to try to charge you on fraudulent intent
7 and incorporate what would be a guide to the answer to your
8 question. But you have the sole authority to determine
9 what happened.

10 Now, I will say it this way, and we will take count
11 one, and it will be typical of count two.

12 If the amount of \$15,650 was falsely made--you may
13 call it a check, but the language is false, not genuine--
14 and the Government proved that beyond a reasonable doubt,
15 and it proved the following beyond a reasonable doubt:

16 That the defendant deposited it in the account of the
17 Franklin Liquidators Corporation, knowing that it was
18 false, in other words, he was aware of it, and I charge
19 you the Government doesn't have to prove that he actually
20 made up the check, but that he knew that it was a false
21 check, if he deposited that check and he deposited it
22 causing that check to be transported into another state,
23 and in count one it is the Wisconsin National Bank of
24 Milwaukee, Wisconsin, with intent to defraud, that is,
25 fraudulent intent, then the Government shall have proved

Charge

1
2 all the elements of the crime charged.

3 Now, fraudulent intent means in the framework of
4 this case and that the Government must prove beyond a
5 reasonable doubt, that he caused it to be transported to
6 the bank in Wisconsin intending that it cause some
7 financial loss to the Long Island Trust Company or some
8 financial gain to himself.

9 In other words, if he intentionally and deliberately
10 deposited with that fraudulent intent to cause it to go
11 to Wisconsin, if he had in mind that there was a delay
12 during the float period and based on that period of delay,
13 the Government claims it's part of the scheme to cheat and
14 that he did it intending that the bank, Long Island Trust
15 Company, suffer a loss or through that scheme that he would
16 attain some financial gain, then the Government shall have
17 proved all the elements of the crime charged.

18 I hope that answers your question.

19 The jury is excused for further deliberation on the
20 matter.

21 (The jury leaves the courtroom at 1:41 P.M.)

22 THE COURT: Do you have any exceptions to the
23 supplemental charge, Mr. Ritchie?

24 MR. RITCHIE: No, I don't.

25 THE COURT: Do you, Mr. Gross?

1 That's it, your Honor, and I think in light of
2 all of this, that there really is no substitute for
3 further testimony and --

4 THE COURT: Well, I'm prepared to make a ruling.
5 I appointed an independent doctor, of the Court's own
6 choosing, for the express purpose of getting an
7 independent view, rather than a partisan view. The
8 Court has great confidence in Dr. Alsop, as I am sure
9 you are aware.

10 I advised the parties prior to the initial
11 examination by Dr. Alsop, at my choice, and you have
12 known my choice. No objection was raised at that time
13 of my choice. He conducted an examination. He testi-
14 fied here in Court. The hearing, my recollection,
15 unless it shall be faulty, lasted for about two hours,
16 during which time the Court had an opportunity to
17 observe the defendant assisting his counsel, not only
18 incidentally, but quite actively during the hearing,
19 at which time Dr. Alsop was examined and cross-examined
20 at length by defense counsel.

21 The Court, on the basis of its own observations,
22 is prepared to make an observation. Of course, Dr.
23 Alsop has made two independent findings, after two
24 examinations of this defendant, that this defendant
25 has more than sufficient present ability to consult

1 with his lawyer, with a reasonable degree of rational
2 understanding, and that he has a rational as well as
3 factual understanding of the proceedings going against
4 him, which is a test set down on Duffy against U.S.;
5 U.S. 408,1950.

6 Under those circumstances, I am going to deny
7 the defendant's application, that he is incompetent,
8 to, by reason of disability, to stand trial.

9 What date do you want, Mr. Ritchie? Monday?

10 MR. RITCHIE: I don't believe so, your Honor.
11 The case has to be reassigned. At the time that the
12 United States submitted its notice of readiness, it
13 had asked, because of the nature of the case, for 14
14 days prior notice.

15 THE COURT: The 9th?

16 MR. RITCHIE: That was with an attorney who had
17 been handling the case from its inception.

18 THE COURT: I said May 9.

19 MR. RITCHIE: Your Honor, I really don't
20 believe the Government can be ready. Mr. Shanley is
21 just about -- he's really disengaging himself from the
22 office. He will be gone as of May 6th.

23 THE COURT: This is a simple tax case? How
24 long will it take to prepare?

25 MR. RITCHIE: It's an TSE --

Rebuttal Summation-Plaintiff

overdraft of \$42,000.00 in October, on October 26th, checks were drawn on the overdraft of \$42,000.00 and the difference was about \$19,000.00 some odd dollars. That means about \$19,000.00, \$20,000.00 in bad checks were cashed in October, October 25th or 26th and the difference between the \$42,000.00 and the \$19,000.00 some odd dollars is about \$20,000.00 in bad checks on the 26th, 28th and 30th. If you remember the redirect examination of Mr. Post on October 26th, the Detroit check is good because the account had \$11,000.00 left in it. That's the debit memo of \$12,000.00 in the check and that comes up to \$23,000.00 but there's \$30,000.00 in bad checks presented on the 28th and 30th which haven't come back yet. Now, that doesn't mean it was good money. The point in fact proven that only \$10,000.00 in good money was deposited on August 30th, when the \$10,000.00 was deposited in the account.

The central issue is not knowledge but Mr. Cooper as a reasonable businessman, would a reasonable businessman act in this way? We have a man who was doing business of a gross of maybe \$5,000.00 a month and the deposits show a gross of \$5,000.00 a month for a yearly gross of \$60,000.00.

Rebuttal Summation-Plaintiff

Now, in the period of two months this man deposited almost \$130,000.00 which went through the account on these counter-checks. Mr. Cooper as a reasonable man, if he is innocent, wouldn't he had known that these checks were no good; I would submit ladies and gentlemen, that the firmest, surest knowledge that this man had doesn't come from what he says but it comes from what he does.

If you recall Mr. Gross notes well, Mr. King was told that Mr. Cooper had gone to Chicago to collect on checks deposited in to the account. Now, ladies and gentlemen, we have no evidence that he ever went to Chicago or what he was telling Mr. King was the truth. I submit what goes in to determining knowledge is what he said and the evidence and in this case there is not a lack of knowledge on his part. It's very strong in the evidence, in light of all the circumstances in this case that his intent, the intent to defraud Mr. King was shown. Mr. Gross noted that there was no evidence that Mr. Cooper was the maker of any of those checks. The Court will instruct you that the Government doesn't have to prove the maker of the check. It has to prove knowledge and the interstate

Summation-Plaintiff

debit memos. I submit that were charges to the account which I submit were service charges. We now have \$45,548.25 -- if you add up all the figures you come up with the sum of \$145,324.50 and that should be reduced by the debit memo of November 9th of \$15,375.00 and the sum roughly is \$130,000.00, roughly in money in bounced checks and we have a total of approximately \$140,000.00 in deposits.

The Government introduced into evidence the checks which are Government's Exhibits 12, 14, 16, 18, 20, 24, 22, 26, 28 and 30, a total of ten checks. You have observed each of the checks and I submit ladies and gentlemen that each check bears the same similarity to the other. The one difference is that some of them, on some of them there is not an account number and on some of the others there is. But other than that they all bear a striking facial similarity I would submit. Now, I would submit if you add up the face amount of all of these ten checks all in the general sum of \$12,000.00 and going up as high as \$15,000.00 and \$17,000.00, you will come in round figures to the numbers, the sum of approximately \$127,000.00. I submit if

Summation-Plaintiff

you add that sum of \$127,000.00 which is representative of Government's Exhibit 4 in which the deposit tickets indicate that the sum came to \$130,000.00, if you take a look at the September statement you will see that there is a debit memo for \$27,085.50 appearing on the September 25th statement and after a deposit in that amount reflected on Government's Exhibit number 4, there is a 20-day float period and that the check bounced so that I submit that we had a debit memo in the sum of \$137,000.00 and that these checks plus one other check that wasn't introduced into evidence in the sum of \$130,000.00. Now, if you subtract the sum of \$130,000.00 from the total deposits of \$140,000.00 you come up with a total of \$10,000.00 and other deposits and if you subtract the sum of \$130,000.00 from the sum of \$160,000.00 we come up with the sum of \$30,000.00 more in debits than reflected by the bouncing of the checks. That would be \$30,000.00 in debits and service charges if you take a look at the service charges, I submit that you can see the amount is less than \$150.00.

What is the value of cashing worthless

Summation-Plaintiff

checks? The value I submit to you is best reflected on this board and best reflected in this case by a comparison of the \$10,000.00 in what I would submit to you were real deposits and the \$30,000.00 that I submit was really the money required by Mr. Cooper and spent by Mr. Cooper and that \$20,000.00 is the value of the ten worthless checks that Mr. Cooper wrote. I submit that the value is there because of the float. And because of the gullibility of Mr. King. Mr. King was lost in the paperwork. He was lost in promises and I submit ladies and gentlemen, when the matter is taken apart and examined and put back together again it's easy to see what happened. We have ten worthless checks going through Mr. Cooper's account all bouncing and coming back. All being deducted against the account and yet he put another one, and another one in the account and another one, and we have checks from Detroit, Michigan and we have checks from Los Angeles, California and we have checks from again Detroit, Michigan drawn on different banks. There are checks from banks in Chicago and a bank in Wisconsin and different

Summation-Plaintiff

parts of the country. The same check was the common denominator. I submit ladies and gentlemen that there is only one common denominator and that is Mr. Cooper, and the Court will instruct you as to the law, forged the checks and affected their interstate transportation.

Now, I submit that handwriting exemplars were given to determine what could be determined and what was determined was that Government's Exhibit 26 and Government's Exhibit 30 probably were written on the same typewriter. You can take a look at them, you can examine them and you can see if they appear to be the same. It's your function to see if my opinion is borne out. Check it out later and see if they look to be the same. I submit ladies and gentlemen, that not only did we have a check here drawn supposedly by a man coming from Chicago, Illinois on Government's 16 but we have a different name and a different signature but the check is the same. Now when we come to the Detroit, Michigan check again, it's the same. What is common with both that there was only one typewriter that was used. Now, I submit ladies and gentlemen, that in the entire

Summation-Plaintiff

midwest, between Detroit and Chicago, Illinois, is there only one typewriter, the typewriter that typed both of these checks? The common denominator is that Mr. Cooper knew that these were falsely made securities and the Court will instruct you that the Government can use circumstantial evidence. What circumstantial evidence the Government has used and hopes to show you as that Mr. Cooper knew that the checks were bouncing and he promised to make them good and he made them good with more bounced checks and I submit that he used the same identical means and that the man knew what he was doing when he submitted bad checks to cover other bad checks. I submit that he wouldn't have done that unless it was part of some scheme, he had some intent to defraud. I submit that the evidence of the fraud is not only shown by the representation of the facial similarities of the checks but by the representation of the typewriting on the checks. I submit that one of the strongest pieces of proof of Mr. Cooper's intent to defraud is displayed very vividly on the deposit tickets in this case.

There were two sets of deposits, three sets of deposit tickets I submit in this case. They go

Post - direct

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Q Where would that appear?

3

A Lower right of the checks, right straight across.

4

Q And after it's fed into the computer, the

5

items, the deposits and checks--

6

A Yes.

7

Q --it's stored in the computer, this information?

8

A Yes.

9

Q And is the monthly stated generated automatically?

10

A It's stored in the computer. And on the second

11

business day of the next month the statements are

12

prepared from the tape of the computer and the state-

13

ments are prepared and then mailed to the customer

14

along with all the paychecks for that period.

15

Q So these bank statements are prepared in the

16

regular course of the company's business; is that

17

correct?

18

A Yes.

19

Q And are they kept in the regular course of

20

your company's business?

21

A A copy is kept for one year and then they are

22

microfilmed again and then these sheets are destroyed.

23

Q Now I will withdraw that question.

24

MR. RITCHIE: I offer Government's 3 into

25

evidence at this time.

Post - direct

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2 MR. GROSS: May I have a voir dire on this,
3 your Honor?

4 THE COURT: Yes.

5 VOIR DIRE EXAMINATION

6 BY MR. GROSS:

7 Q Mr. Post, you said these are a result of some
8 computer process?

9 A The statements themselves?

10 Q The statements.

11 A Yes.

12 Q And I take it that is fed into the computer by
13 someone?

14 A Programmed.

15 Q Okay.

16 Are you that someone?

17 A No.

18 Q Do you have any knowledge as to who that someone
19 is?

20 A No.

21 Q Do you have any knowledge as to what that someone
22 bases his information that he feeds in on?

23 A I have an idea on what they base their programming,
24 yes.

25 Q And you don't know specifically what is based

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there?

A From the deposit tickets and the checks drawn.

Q Have you ever seen the deposit tickets or checks drawn?

A On this particular account?

Q Yes.

A I have seen some deposit tickets and some deposited items.

Q In any event, you have not fed the computer the information to produce this?

A No.

Q You do not know who fed the information into the computer, do you?

A No.

Q And you would thus have no information as to the knowledge of the person who did feed this information into the computer; is that correct?

A Specific person, no.

MR. GROSS: Judge, I object.

THE COURT: Objection overruled.

Let it be marked.

MR. GROSS: Exception.

THE COURT: It was clearly demonstrated that these documents are made routinely in the

regular course of business and the fact that it is computerized doesn't take it out of the business record.

Let it be marked.

MR. GROSS: Respectfully except.

THE CLERK: Marked in evidence.

MR. RITCHIE: Your Honor, may these be exhibited to the jury? I will hand them in for examination rather than reading them. It's quite lengthy.

THE COURT: Is every item to be read?

MR. RITCHIE: I can selectively read certain items I am interested in, your Honor.

THE COURT: Why don't you do that and Mr. Gross can read others selectively, instead of giving papers of a print out to a jury.

MR. RITCHIE: The month of August, 1973, the following items appear as debit memos: \$5,500 DM; \$5,575 DM; \$9,949.50 DM; \$9,949.50 DM; \$2,500 DM; \$9,949.50 DM.

And these are the deposits for that month: \$234.12, \$9,949.50, \$2,500, \$7,668, \$9,949.50, \$9,949.50, \$700, \$1,304.84, \$10,295.39, \$1,560, \$2,322.80.

Post-Plaintiff-Redirect

A Yes.

Q Now, you reviewed the bank statement Government's Exhibit 3 in evidence, have you not?

A Yes.

Q Now, had you been the branch manager would you have then been concerned with this account?

MR. GROSS: I object to that.

THE COURT: Sustained as to form.

I think I will allow the witness to express an opinion in a field which I find he's an expert in. It's relevant to the issue in this case or the issues raised by the defendant.

BY MR. RITCHIE:

Q Do you have an opinion as to whether the type of account you have before you focusing on the overdraft, is one that you would expect routinely to have an overdraft in or is this case different than the routine overdrafts?

A In reviewing the statements there are overdrafts listed and uncollected funds listed. Our computer is out of line as to frequency and are sometimes out of line. They don't have to answer to senior management so that's why they are occurring in a high frequency manner.

Q Mr. Gross asked you whether anything is

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MR. GROSS: Exception, your Honor.

THE COURT: Are you ready to proceed
with your witnesses?

THE GROSS: The Defendant is not defending.
The Defendant rests.

THE COURT: Would you do that in front of
the jury and I'll call them back once more.

(Whereupon, the jury entered the courtroom
at 1:40 P.M.)

THE COURT: Mr. Gross, you may proceed.

MR. GROSS: At this time the Defendant
rests, your Honor.

THE COURT: We'll take a short recess
probably about ten minutes and then I will
call you back to the courtroom and then the
lawyers will sum up. The jury is excused.

(Whereupon, the jury left the courtroom.)

THE COURT: You have a copy of the
requests to charge, Mr. Gross, have you gone
over them?

MR. GROSS: I have them and I have gone
over them.

THE COURT: All right, do you have any
objections to request number 1?

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MR. GROSS: No, your Honor.

THE COURT: Any objection to number 2?

MR. GROSS: Might I say your Honor, I have no objection to any of the requests except request number 12.

THE COURT: What is your objection? Isn't it true, isn't the request true?

MR. GROSS: The point is that this allows for too many possibilities. This would give credence to establish the specific count in the indictment by acts not specifically opposed in the indictment.

THE COURT: First of all, the case is over and the Government has introduced the prior similar acts so it is already in the record. You made an objection to those or to any evidence of those acts. Now, all the Government is saying that the evidence may show a criminal intent in this case. That the act or acts in count 1 and 2 were done, eventhough they are criminal in nature it's circumstantial evidence.

MR. GROSS: I think that the request is unusual in form. All the Government needs to have done is say that the criminal responsibility

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2 may be proved by circumstantial evidence.

3 MR. RITCHIE: I just want the effect
4 of the charge, your Honor. I am not requesting
5 that particular language.

6 MR. GROSS: Might I say if the charge is
7 put in those terms I would not have any exception
8 to it if the terms are broadened in the requests.

9 THE COURT: I would certainly permit the
10 Government to argue in granting its requests but
11 that does not mean that I will be charging in
12 the language requested. I may agree with the
13 principle --

14 MR. GROSS: My objection would be to the
15 verbiage which comes down to establishing any
16 circumstantial evidence. That's not the same
17 verbiage put in the request. I may say that
18 really for the prosecution to prove criminal
19 intent by direct evidence -- it's easily proved
20 by circumstantial evidence.

21 MR. RITCHIE: The checks are evidence
22 and the defendant did deposit the checks in his
23 account and it shows a pattern, a design to
24 defraud.

25 THE COURT: I think that is a fair argument

1
2 and I won't charge that criminal acts may be
3 considered as circumstantial evidence.

4 MR. GROSS: I just want to emphasize
5 and just be able to argue that. We are ready
6 for summations. I would just like to set up
7 my exhibits.

8 THE COURT: We'll take five more minutes
9 and then you can start your summation.

10 MR. RITCHIE: Thank you, your Honor.

11 Your Honor, I request leave to use the
12 blackboard during the course of my summation
13 purely for illustrative purposes.

14 MR. GROSS: Your Honor, I object. It's
15 almost introducing a new form of evidence to
16 the jury. It's not the same thing as if he
17 would be explaining the evidence to the jury.
18 May I say also your Honor, the evidence at this
19 point is before the jury and they have their
20 own recollection as to the testimony. I would
21 say that is tantamount to, after the case is
22 closed coming in with graphic proof such as
23 photographs or something like that.

24 THE COURT: It can do no more than
25 demonstrate what is in evidence.

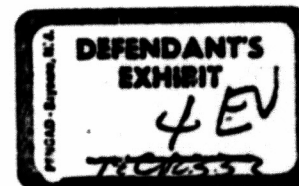
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MÉMORIAL SLOAN-KETTERING CANCER CENTER
1275 YORK AVENUE, NEW YORK, NEW YORK 10021
(212) 879-3000



November 7, 1974

Frederick H. Block, Esq.
295 Madison Avenue
New York, New York 10017



RE: Mr. William Cooper

Dear Mr. Block:

This letter is in reply to a request for a more detailed medical report regarding Mr. William Cooper.

Mr. Cooper has a rather complicated medical history. In brief, 3 major problems at this time are: severe, intractable chest pain which is mechanical in nature; recurrent polyps of the large bowel with a biopsy diagnosis of carcinoma in situ; a recent history of persistent blood-tinged sputum, the etiology of which has not been determined.

The onset of his chest pain immediately followed a combined thoracic and abdominal surgical procedure in May 1969 for the repair of a massive diaphragmatic herniation of the colon into the chest cavity. The surgery was complicated by extensive pericardial and pleural adhesions and secondary atelectasis of the lower lobe of the left lung. Post-operatively it was noted that he had marked flaring of the left lower rib margin and distention of the left upper abdomen. Fluoroscopic examination indicated decreased movements of the left diaphragm. Because of the severity of the pain, he underwent a second operation in November 1969 in an attempt to stabilize his weakened chest wall as well as to remove the peripheral nerves lying between the partially resected ribs. There was no discernible improvement following this, and his symptoms have continued unchanged up to the present time. The pain is aggravated by postural changes and is most severe in the lying position or when sitting longer than 45 minutes. On examination there is marked tenderness along the entire course of the surgical incision which follows approximately the left T6 dermatome. He was referred to our Pain clinic at the Memorial Sloan-Kettering Cancer Center in an attempt to utilize various therapeutic modalities to alleviate his incapacitating symptoms. So far, none have been successful, in part possibly due to a neurologic deficit in cutaneous sensation on his left side

Memorial Hospital for Cancer and Allied Diseases
Sloan-Kettering Institute for Cancer Research
Sloan-Kettering Division, Graduate School of Medical Sciences, Cornell University

MEMORIAL SLOAN-KETTERING CANCER CENTER
1275 YORK AVENUE, NEW YORK, NEW YORK 10021
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Frederick H. Block, Esq.

Page 2

which is associated with a left-sided weakness. This is thought to be a residual of a cerebrovascular accident which was an additional complication in the 1969 surgical procedure. At any rate, the sensory deficit has severely limited the effective utilization of various mechanical cutaneous stimulators which frequently produce at least temporary relief in chronic pain of this type. In addition, an attempt to produce a nerve block by the injection of alcohol resulted in a severe allergic reaction with respiratory distress. This necessitated hospitalization for stabilization and observation. To date, of the many therapeutic modalities employed, none have been effective in providing significant symptomatic relief.

The other stated major problems, colonic carcinoma and blood-streaked sputum are possibly related. Following routine evaluation for bloody stools, 3 large polyps were removed from the colon in the Spring of 1974. Histologic diagnosis on one of the specimens was carcinoma in situ. Subsequently he has had recurrence of symptoms and has undergone further removal of recurrent polyps. More recently he developed persistent blood-streaked sputum occurring on a daily basis which was initially thought to be related to the severe allergic reaction noted above. However, the persistence of the bleeding has raised the suspicion that he may, in fact, have a more extensive malignant process than originally considered. The extent of his disease has not been determined.

In summary, this is a 63 yo man with a 5 year history of chronic, incapacitating, mechanical chest pain resistant to multiple therapeutic modalities. He is currently being followed for documented malignant changes of the large bowel and is under current evaluation for persistent blood-streaked sputum which may be related to an underlying malignant disease. As stated in my previous letter to you, I do not think that he is able to withstand the physical strain of a court trial at this time.

If I can be of any further assistance to you, please let me know.

Sincerely,

Norman L. Chernik, M.D.
Assistant Attending Neurologist

NLC:ang

MORTON MARKS, M. D.
566 FIRST AVENUE
NEW YORK, NEW YORK 10016
TELEPHONE 679-3200 EXT. 3246

May 13, 1976

Organized Crime Section
Criminal Division
Federal Building
35 Tillary Street
Room 327-A
Brooklyn, New York 11201

Re: WILLIAM COOPER

Dear Mr. Dougherty:

In accordance with your request, William Cooper was again seen in neurological consultation in my office, this time on April 13, 1976. I refer you to my previous report dated March 6, 1975. On the occasion of his last visit the following interval history was obtained.

INTERVAL HISTORY:

The patient states that the pain is becoming worse. He is under the care of Dr. Chernik and is being treated with levo-Dromoran, which he takes every four hours with Tylenol. He takes two or three Seconal capsules at night with Valium. He complains that he is unable to sleep at night. He still is coughing up blood. Hospitalization for a rhizotomy or chordotomy was recommended and he has seen Dr. Dunbar. He is reluctant to have the procedure carried out. He is currently also taking Hygroton. He complains that he has been very depressed. He recently had a recurrence of his bleeding and was operated upon at Mt. Sinai Hospital in September, 1975 and January, 1976.

NEUROLOGICAL EXAMINATION:

A comprehensive neurological examination was again performed. The patient is an obese right handed male. Weight was now 204 lbs. Blood pressure was 170/100. A general physical examination was not performed, however, there was evidence of an irregular pulse. There was still marked tenderness on palpation of the posterior axillary line on

cont./

WILLIAM COOPER

May 13, 1976

the left side in T6 to T8 dermatones. There was a left sided weakness and a hemi-hypalgesia and hypesthesia. Snouting was present. There was evidence of a left carotid bruit. Hearing was diminished bilaterally.

REVIEW OF ADDITIONAL MEDICAL RECORDS:

I had the opportunity of reviewing a recent medical record submitted by Dr. Chernik dated April 9, 1976. He felt that Mr. Cooper's general medical condition was deteriorating and that he still showed signs of depression.

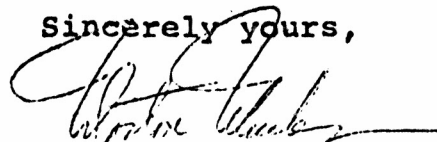
EVALUATION AND OPINION:

From review of the history and present medical status, I would like to submit the following opinion pertaining to Mr. Cooper. The patient still manifests a number of serious medical problems. His primary disability is still that of a severe radiculopathy which is secondary to the prior operations that he had for the repair of a hiatus hernia. His is only minimally controlled with the use of medication. In addition, he has other problems including persistent hemoptysis and problems with his large bowel.

It is still my opinion that Mr. Cooper's medical problems are extremely serious and there has been no significant improvement. I still believe that although his standing trial would pose no serious threat to his life I sincerely believe the physical and emotional strain involved would aggravate and would accentuate the pain and discomfort which he has been coping for many years. I still recommend that he not stand trial at this time. Unfortunately, the overall prognosis from a medical point of view is very poor.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely yours,



MORTON MARKS, M.D.
Diplomate, American Boards
Neurology and Psychiatry

MM/do
enc bill

1 Chernik-direct

2 THE CLERK: Defendant's Exhibit 4, a letter,
3 Norman L. Chernik, M.D., dated November 7, 1974 marked
4 for identification.

5 Defendant's Exhibits 1 through 4 is marked in
6 evidence.

7 MR. BLOCK: Now there is some longhand on there
8 that is my longhand. But I am not offering the long-
9 hand obviously.

10 Q Dr. Chernik, these reports that you have made
11 which are now in evidence have stated it as your medical
12 opinion that Mr. Cooper should not stand trial on the criminal
13 charges which are pending against him in this Court. You are
14 aware of that, of course?

15 A Yes.

16 Q Could you give the reasons for that opinion of
17 yours, would you speak slowly and distinctly so the Judge and
18 the Court and Mr. Shanley could follow you.

19 A Well, as outlined in the letters, Mr. Cooper
20 has a long history dating from 1969 a severe contractable
21 pain that has interfered with his ability to maintain his
22 previous activities and has also been resistant to various
23 therapeutic modalities as outlined in the letters.

24 Q What does therapeutic modalities mean, drugs,
25 pain killers?

1 Chernik-direct

2 A Drugs and also in the case of Mr. Cooper he
3 has had various manipulative procedures performed. Attempted
4 nerve blocks, mechanical vibratory stimulators. He had
5 acupuncture performed at Memorial Sloan Kettering Center.

6 THE COURT: You put all that in the past tense.
7 Is he on drugs now?

8 THE WITNESS: Yes.

9 THE COURT: Is he on pain killers?

10 THE WITNESS: Yes.

11 THE COURT: What drugs is he on?

12 THE WITNESS: He is currently on levo-dromoran
13 which is a synthetic narcotic analgesic. He is on
14 tylenol. He uses these intermittently.

15 THE COURT: What do you mean by intermittently,
16 daily?

17 THE WITNESS: He uses both of them daily but
18 will alternate the narcotic with the tylenol in an
19 attempt to get a better level of pain relief.

20 THE COURT: Do they affect his mental capacity
21 in any way?

22 THE WITNESS: Yes, your Honor. This has been
23 the primary problem in attempting to achieve some sort
24 of pain relief through the use of drugs with Mr. Cooper.
25 And it is not an unusual problem we conquer in patients

Chernik-direct

suffering from pain produced by the type of problem that he has. These drugs, especially the narcotic, are known to produce clouding of mentation, lethargy, inability to function properly, and many people are very reluctant to take them on a prolonged basis because of that reason, because of those reasons.

Q May I continue? Sir, you talk about his pain. How would you describe his pain, is it intractable pain would you say?

A It has been described as such and it is recorded and fairly well documented as such, at least since the time that we have been observing him at Memorial Sloan Kettering Hospital.

Q Now Doctor, pain is a subjective thing, isn't it? I mean the patient feels pain and says to the doctor I feel pain. But is there a case in which you can verify the fact that the patient is in pain by the objective conditions from which he suffers?

A Yes, definitely. There is no question in my mind that the structural alterations that are clearly documented radiographically occur in a region that is bound to produce the type of pain that Mr. Cooper has. He also has documented neurological deficits. And this is not a subjective phenomenon.

Chernik-direct

Q Now Doctor I would like you to assume that Mr. Cooper were to be placed on trial in this Court on criminal charges. And that he would be sitting in Court listening to the proof consisting of documentation and witnesses that the Government would call against him. And in view of the conditions which you have described in your letters which are in evidence and what you have just testified to on the witness stand, do you think that Mr. Cooper would be able to assist his attorney in defending himself?

A No, sir, I do not.

Q You do not?

A No.

Q Why is that?

A For two reasons. First of all, the man is suffering severely. This alone, if any of you have ever had the occasion know that when you have severe pain it interferes with your mental capacities. In addition to which he is and has to be maintained on certain pain medication in an attempt to provide partial relief, never complete relief. And one of the problems in that has been further compromises of his capabilities.

Q You mean attempts to dull his mind through medication?

A Yes, sir. And the additional facts which I

Chernik-direct

would like to bring out I didn't have a chance to, and one of my concerns in terms of his wellbeing is that chronic pain is known to produce a severe depressive state. Which again, I don't think he is in any psychological condition to think and as you in the way that he has to. And this is directly result of his prolonged condition.

THE COURT: Could he for a limited period of time, say an hour in the morning and an hour in the afternoon?

THE WITNESS: Well, your Honor, the problem I don't think is, the problem is that it is not a matter of duration of time that Mr. Cooper sits in the courtroom. The problem is the fact that the duress of having to stand on trial begins before he walks in the doors of the Court.

THE COURT: We are talking about at the moment his mental capacity to be able to assist his counsel. And I am saying would he have time, if it was not too long a time, could he for periods of time?

THE WITNESS: I do not believe so, your Honor.

THE COURT: Do you think apart from his validity to assist his counsel, do you think a trial would have any adverse effects on his present condition?

THE WITNESS: I think it certainly would not

1 Chernik-direct

2 help it. And I think it would adversely affect it.
3 And the pain and depression which he suffers would be
4 aggravated by the mental strain at the trial. There is
5 no question in my mind that it would become even more
6 difficult in terms of overall management. And I try to
7 make that point clear in both of my detailed letters
8 to Mr. Block.

9 THE COURT: There would be no danger to his life
10 as such?

11 THE WITNESS: That is correct, your Honor. I
12 can't say that it would endanger his life. But in
13 answer to Mr. Block's question as to whether he would be
14 able to assist in the matter that he is normally
15 capable of, I do not think he can do that.

16 MR. BLOCK: I have no further questions, your
17 Honor.

18 CROSS-EXAMINATION

19 BY MR. SHANLEY:

20 Q Doctor Chernik, my name is Richard Shanley. I
21 met you before a few minutes before the hearing. I represent
22 the United States Government.

23 When did you first meet Mr. Cooper?

24 A I first met Mr. Cooper I believe at the time of
25 my graduation from medical school, St. Louis University. I

Chernik

sort of thing. But what you can do is observe the patient's functional capacity.

Q Can a patient feign pain?

A Not this type of pain, no.

Q Can he feign the severity of the pain?

A To this extent, no.

Q What you are saying then is that the pain that you have observed of Mr. Cooper is of no way feigned?

A Well, sir, in the specialty of my practice we are familiar with not only this type of pain, but also we are familiar with the functional, the neurological deficits that are clearly documented and cannot be feigned because we have numerous ways of examining the patient to verify objectively, per our examination. And this is a very good correlation between neurologic deficit which Mr. Cooper demonstrates and the nature and severity of the pain which he complains of.

Q Pardon my ignorance, what is neurological deficit?

A He has pain in a reticular pattern. And according to that he has a sensory loss that follows a certain pattern which he is not aware of in terms of the anatomy.

Q Sensory loss of hearing?

A No, it has nothing to do with loss of hearing.

Chernik-cross

The body is, the sensory distribution along the body follows a certain pattern according to certain nerves, peripheral nerves. And the patient may feign a certain pain but he is not aware that there is a sensory loss that would be associated with that and the anatomic, the geographic distribution of that sensory loss. Most patients will identify a sensory loss if they are feigning between right and left side and submit it at the midline.

Mr. Cooper has what is known as a hemi-sensory deficit which covers half of his body. But in addition to that he has a pattern of sensory loss along the trunk which clearly follows the area of the pain which he is complaining of.

In other words, there is two distributions to his neurologic deficit.

Q I think I comprehend. But what you are saying then, you can tell from this sensory deficit and other examinations the severity of his pain, is that what you are testifying to?

A No. But what you can say, he does have a neurologic deficit which is objectively verified, which is consistent with the diagnosis of a reticulopathy and his pain is reticular in nature.

Q That reticulopathy means a nerve --

1 Marks -direct

2 1976 and March 5, 1975. I have them both stapled together
3 and I ask that you mark the whole package as Government's
4 Exhibit 1.

5 THE CLERK: It will be Government's Exhibit A.
6 Government's Exhibit A, two reports, are marked in
7 Evidence.

8 MR. SHANLEY: Is there any objection, Mr. Block?

9 MR. BLOCK: No.

10 MR. SHANLEY: For the record, I have some
11 handwritten notes here on the side which I will erase,
12 your Honor.

13 Q And you examined Mr. Cooper on these two
14 occasions, Doctor, and could you in a nutshell tell the Court
15 the results of your examination?

16 A Yes, Mr. Cooper has several serious medical
17 conditions. From the neurological point of view he does show
18 certain sensory deficits. And he has a persistent pain
19 syndrome that was onset since 1969.

20 Q Stop there on the pain syndrome. Did you
21 conduct any test to establish the severity of the pain?

22 A There are no really satisfactory objective
23 measures of the amount of pain that a patient suffers. Some
24 of this is clinical judgment. Some of this is the outward
25 appearance. At times if the pain tends to be an acute type

9/24/76 Hearing

!arks -direct

of thing and occurs in short bouts, you may get an elevation of blood pressure capillary changes, but with chronic pain you will frequently not see that type of response. And when the chips are down in the end you have to rely on two things.

The patient's description of the pain, how reliable a witness he is and how much does it functionally incapacitate him.

Q What did you determine or what did you find on using those two criteria?

A Well, that he was functioning on a lesser level than he had before 1969. That I believe that this man had a basis for his pain, that is his complaints were valid. I had no objective measure to say at one percentile there is no such thing.

Q And you say functioning. Did you notice Mr. Cooper in any way being irrational or out of touch?

A No, he was not psychotic or as the laymen would say, he is not nuts.

Q He was completely aware of his surroundings?

A He was aware of his surroundings, the problems that he had and the consequences of all that he had gone through.

Q Between the first time that you saw him in

1 Marks-direct

2 1975 and then a year later in 1976, were you able to evaluate
3 in any way the severity of the pain on each occasion or could
4 you compare the severity of his pain between 1975 and 1976?

5 A Objectively, no. Subjectively, I had to
6 depend upon his description of the pain. And he did say
7 that at the time of my second examination in April that his
8 pain was getting worse. That he had now switched from a
9 medication which was, let's say low on the scale of narcotics,
10 to a medication which we would consider a harder drug. And
11 that he was obliged to take this more frequently.

12 Q As a result of your evaluation are you prepared
13 to state your opinion as to whether or not the defendant's
14 life would be in danger if he stood on trial?

15 A I can give an opinion.

16 Q What is that?

17 A His life is not in danger if he stands on trial.

18 Q And with regard to his ability to assist in
19 his own defense, what would your conclusion be as to that?

20 A My conclusion is that he would assist in his
21 own defense with the recognition that when his pain is bad
22 or he has an aggravation or if he is under a large dose of
23 medication at that time, that he may have additional impair-
24 ment. But my recommendation is as a physician, by him
25 standing on trial and I recommend that he not stand on trial,

1 Marks -direct

2 is not just on that basis, not permanently on that basis,
3 but as my role as a physician, not as a legal authority.
4 But my problem is to determine how much do I believe that
5 an alleviation of pain and suffering should be considered.
6 And it is on that basis that I made the recommendation that
7 I would recommend from the medical point of view that he not
8 stand trial because the strains, pressures, tensions, physical
9 aspect of this thing in my mind certainly would aggravate
10 his pain. How much, there is no way of knowing.

11 Q Thank you, Doctor.

12 MR. BLOCK: I have no questions, your Honor.

13 THE COURT: As far as assisting in his own
14 defense, as I understand it, as long as he was not
15 under severe pain at a particular time --

16 THE WITNESS: But he is under severe pain. It
17 is a matter of degree.

18 THE COURT: Does this go away like most peoples'
19 pain?

20 THE WITNESS: Frequently, there is a high level
21 of pain but there are times when these things can
22 essentially -- in other words, a thing is never that
23 smooth.

24 THE COURT: And when he is under the most severe
25 attack of pain is it your opinion he cannot assist in

1
2 his defense?

3 THE WITNESS: If he says he is in severe pain,
4 I have to accept his description.

5 THE COURT: My question is if he is under a severe
6 attack of pain, one of its peaks at that point or
7 points in time, would he be able to assist in his
8 own defense?

9 THE WITNESS: It would certainly hamper him
10 significantly.

11 THE COURT: How often do your records show he
12 must take these narcotic drugs?

13 THE WITNESS: Well, I questioned him about that
14 before I came in. When I saw him in April he was
15 taking his medication every four hours. He now tells
16 me he was taking them every two hours.

17 THE COURT: And presumably that lasts?

18 THE WITNESS: Two hours, I don't know.

19 THE COURT: And what effect if any do you think
20 that medication that he is currently taking would
21 have in his capacity to communicate with his counsel?

22 THE WITNESS: I don't know because I don't know
23 the current dosage. And I have not had the opportunity
24 to examine him and work with him while he is under this
25 type of dosage of drug.

1 THE COURT: In other words, you didn't give
2 him the type of psychiatric exam to enable you to give
3 an answer as to whether even when he is under the
4 current dosage, he would be able to communicate
5 adequately with Mr. Block with respect to his defense?

6 THE WITNESS: The problem with this type of
7 thing is when you see the patient all you can say
8 is what's going on. I don't know how much pain he
9 would have in five hours or two hours from now or how
10 effective the drug is, the dosage or whether it is
11 ineffective. And I cannot prophesy when I examine
12 the patient. I can just give what I see at that time.
13 But from the series of steps to see how well the
14 patient has been functioning, you get an overall guide.

15 MR. BLOCK: Your Honor, please may I ask a
16 couple of questions.

17 CROSS-EXAMINATION

18 BY MR. BLOCK:

19 Q Doctor, you heard Dr. Chernik testify here.
20 And you heard him testify that his recommendation was based
21 on his experience in actually treating the defendant now
22 over a period of years for some four years. And you heard
23 him say I believe that this intractable pain could interfere
24 with the defendant's concentration during the trial, do you
25 agree with that?

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A I believe it does interfere with ones ability to concentrate. The problem is I cannot say to what extent.

Q I understand that. Dr. Chernik said the same thing. You cannot classify it.

A That is correct.

Q And you also agree with Dr. Chernik that this pain is verifiable objectively?

A No pain is not verifiable. There are other associated conditions, so that as pieces of a jigsaw puzzle they all fit in together and point that this man is not a faker. In other words, he has a reality basis. But I don't have an objective measure to say oh now he has 20 percent pain and in an hour from now it is 30 percent pain. And I don't think Dr. Chernik meant to imply that.

Q I don't think so.

Now, Dr. Chernik also talked about the medication that he is presently getting. But it is true he didn't mention the amount as I recall. Would you agree that the medication is Levo-dromoran?

A Levo-dromoran.

Q Does that have a tendency to dull the mind?

A Like any narcotic.

Q And so that when Dr. Chernik gave as one of his reasons that the necessity for this man to take this kind of

1
2 narcotic drug and the fact that such a drug does dull the
3 mind, was one of his reasons for saying that the defendant
4 should not stand trial. And what I am asking you, if you
5 are in general accord with that?

6 A Well, in general we are in accord. We might
7 differ only to the degree because there is no objective
8 finding.

9 Q Did you note in your examination that Mr. Cooper,
10 that he was in a depressed frame of mind?

11 A Yes, he is very depressed.

12 Q Did you hear Dr. Chernik testify that that was
13 another reason why he thought that he would be adversely
14 affected if he were forced to go to trial in a criminal case?

15 A You must excuse, but any time you are depressed
16 it does not help. Again, it is a matter of degree. When you
17 are depressed it does not help you in anything you do.

18 Q But depression is a word of art in a medical
19 profession.

20 A Depression is a diagnostical condition associated
21 with certain mental feelings that can impair one's functional
22 capacity.

23 Q And you found that condition in the defendant?

24 A This man is depressed.

25 Q Now, just one second. Sir, I would like you to

1
2 Q And I ask you if you agree with Dr. Chernik
3 that that does have a dull effect on the mind?

4 A I would say again particularly, it may very well
5 have a dulling effect on the mind. Everyone has a different
6 threshold and unfortunately, the same person at times will
7 have a dulling effect or an effective dose and at other times
8 it is ineffective.

9 MR. BLOCK: I have nothing further.

10 THE COURT: All right, Doctor, you may step down.

11 Well, I take it we can treat this under section
12 4244 Title 18, because in effect that is what it is to
13 determine whether he has a medical capacity to stand
14 trial. And as the record stands now, I don't know
15 whether it is sufficient. What I would like to do is
16 order the record or have the Government order the
17 record. And I would like you to submit the record,
18 Mr. Charley, to your experts in Washington and get
19 their views on it. And I would like to study the record
20 myself. And then I think I will determine whether or
21 not I want him to be committed to Kings County or some
22 other hospital for some period of time for a further
23 examination.

24 MR. SHANLEY: I was going to suggest that to the
25 Court, that it might be an alternative to see that --

1 THE COURT: I am certainly not convinced one way
2 or the other that he cannot stand on trial. Although,
3 I think there might be some difficulties involved. But
4 I would like an opportunity to look at the record
5 little bit closer, to look at all these doctors'
6 reports again. I would also like you to submit this
7 record to your superiors in Washington, because they
8 have had a number of cases like this in the Criminal
9 Division and the Tax Division as Mr. Block well knows.
10 As long ago as 25 years ago he was arguing this kind
11 of case with me. And they can give us their profes-
12 sional opinion on the subject, given the record we
13 have here. I would like that done. I would like to
14 look at the record myself and look at the doctors'
15 reports, which I for some reason or another, I know you
16 gave them to me at one point.

17 MR. SHANLEY: All the originals were sent to
18 your Honor each time.

19 MR. BLOCK: If you want I can give you those
20 in evidence.

21 THE COURT: You can make xerox copies for me.

22 MR. SHANLEY: The ones in evidence are offered.

23 THE COURT: You can make xeroxes out of it.
24 But you order the record and send it down to Washington
25 and I will study it. I think I am going to ask him to

1 be put in some hospital, probably Kings County Hospital
2 long enough for them to give me a third opinion on it.
3 I don't think I will need a hearing after that. I have
4 a pretty good idea of what is involved here. I just
5 think he may need somebody to look at him for a sustained
6 period of time, which I don't think either of these two
7 doctors had had an opportunity to do.

8 MR. BLOCK: Possibly not.

9 THE COURT: Certainly Dr. Marks indicated he had
10 not.

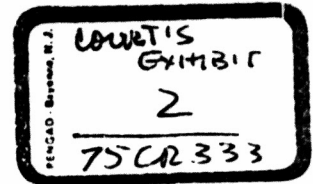
11 MR. BLOCK: No, he saw him twice.

12 THE COURT: And I am not talking just about an
13 hour examination. I am talking about a period of time
14 which would enable them to, over a period of time,
15 determine whether or not he was rational enough and so
16 forth that this didn't interfere with his thinking.

17 MR. SHANLEY: Your Honor, we will order the record
18 and submit the photostats of all the documents in
19 evidence to your Honor. And then I would suggest that
20 this Court perhaps set a date for a status report which
21 does not involve the doctors, simply Mr. Block.

22 THE COURT: I will set it up on October 22nd at
23 2 o'clock. And at that time it will be back from Wash-
24 ington and I will have a chance to look at it.

25 MR. BLOCK: October 22nd. Your Honor, will I be



January 31, 1977

Reese F. Alsop, M.D.
North Shore Medical Group
325 Park Avenue
Huntington, L.I., N.Y. 11734

Dear Reese:

Re: U.S. v. William Cooper
74 CR 333

In accordance with our telephone conversation, I am enclosing copies of the following as background information for your examination of the above-named defendant.

1. Copy of the Indictment
2. Letter dated October 7, 1974, addressed to me by Dr. Kenneth Jordan
3. Letter dated September 5, 1974, addressed to defendant's attorney by Dr. Norman L. Chernick
4. Letter dated November 7, 1974, same addressor and addressee
5. Letter dated August 26, 1975, " " " "
6. Letter dated April 9, 1976, " " " "
7. Letter dated October 11, 1976, " " " "
8. Letter dated March 6, 1975, addressed to the Organized Crime Section by Dr. Morton Marks
9. Letter dated May 13, 1976, same addressor and addressee
10. Transcript of hearing before me September 24, 1976

Mr. Cooper's attorney is Mr. Frederick Block of 295 Madison Avenue, New York, New York 10017 [212/685-1161]. Either Mr. Block or Mr. Cooper will call your office to arrange for an appointment at a convenient time.

As we discussed on the telephone, the test stated by the United States Supreme Court in Dusky v. United States, 263 U.S. 402, 80 S.Ct. 788, 789 (1960), is "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and whether he has a rational as well as factual understanding of the proceedings against him."

In connection with the first portion of such test, I would want to know whether the defendant is physically able to sit for approximately two hours at a time during the trial and have the ability to consult with his lawyer with a reasonable degree of understanding during such periods. Normally our court day, with 5-10 minute mid-morning and mid-afternoon recesses,

Reese F. Alsop, M.D.
Re: U.S. v. Cooper - 74 CR 333 -

runs from 10AM to 1PM and 2:15PM to 5PM. If required we could shorten these times.

The defendant contends, as you will gather from reading the background material, that his alleged chronic and intractable pain will compromise his mental state and interfere with his ability to concentrate on the proceedings and thus impair his ability to aid in his own defense.

The government is of the opinion that the evidence as to his pain is entirely subjective.

In essence therefore I would like your view as to whether you think his pain is real and is of such magnitude and of such frequency that he cannot adequately assist in his own defense at a trial.

At the conclusion of your services, please send me a statement therefor and I will arrange to have the same paid.

With many thanks and best regards.

Sincerely,

Thomas C. Platt
U.S.D.J.

Encls.

THE NORTH SHORE MEDICAL GROUP

INTERNAL MEDICINE

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MARCH 7, 1977

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IRENE N. LLOVERA, M.D., F.A.C.S., F.R.C.S.(C)

EAR, NOSE AND THROAT

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FRED C. DI BLASIO, M. D.

ADMINISTRATION

WILLETS H. SHOTWELL

The Hon. Thomas C. Platt
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Mr. William Cooper

Dear Judge Platt:

As you can see from the accompanying medical summary, Mr. William Cooper is suffering from a multitude of ills. It is my considered opinion, however, that with good medical management there is no reason why he could not defend himself in court, or consult in a satisfactory manner with his attorney. Although coronary artery disease and duodenal ulcers are adversely effected by stress, I feel that the latter can be cured by a careful medical management, and that the former can be alleviated or controlled.

Hoping this proves helpful, I am

Sincerely,

Reese F. Alsop, M.D.

RFA:ec

CC: Richard L. Shanley, Special Attorney
Frederick H. Block, Esq.

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ADMINISTRATION

WILLETS H. SHOTWELL

Dr. Henry Mednick
50 Hempstead Turnpike
Lynbrook, New York 11563

Re: Mr. William Cooper

Dear Dr. Mednick:

Mr. Cooper states that numerous neurological consultations in New York had resulted in the opinion that he was suffering from a severe causalgia, characterized by pain around the chest margin and in the site of surgical wounds which resulted from two extensive procedures for the correction of a diaphragmatic hernia where the colon was found to be in the chest and adhered to the pleura. Of further concern has been multiple polyps of the colon, treated by Dr. Jerome D. Waye of 1065 Park Avenue, New York, New York by colonoscopy. Although one of the polyps allegedly revealed carcinoma in situ, there was no evidence, at any time, of an extending lesion of a malignant nature. Of further concern is a report on 2/16/77 when the patient had a colonoscopic examination and developed atrial fibrillation with many premature ventricular contractions. He was treated first with Quinidine and then with Inderal and Digitalis by the local cardiologist.

Of further interest in the past history has been pneumonia without complications, and hepatitis in the past without lasting ill effects. The patient had concussion and was treated at St. Vincent's Hospital with convulsions many years ago. There have been no sequelae. The patient is allergic to Penicillin. He is overweight at 206 pounds. He has a complete dental prosthesis. Although the patient had had a past history of peptic ulcers, it was alleged that at the time of his surgery a vagotomy was performed and that duodenal ulcers were therefore not possible at this time. Nonetheless, the patient has classical symptoms of ulcers and is consuming very large amounts of soda bicarb as the powder. In addition, he has a past history of borderline hypertensive cardiovascular disease.

The patient's family history revealed that his father died at 78 of old age. His mother died of heart disease at 72. He has one brother 46, who is well following a myocardial infarction. He has a sister who is 67, living and well. There is no family history of tuberculosis, cancer, diabetes, mental illness, allergy or gallstones or glaucoma, bleeding, migraine, epilepsy, or gout. The patient's habits are model, one cup of coffee, one cup of tea, rare alcohol, no tobacco. He describes himself as a poor sleeper.

THE NORTH SHORE MEDICAL GROUP

Re: Mr. William Cooper

March 7, 1977

Medications have included Quinidine, as mentioned, Digitalis, and Inderal 10 mg. four times a day. In addition the patient requires Levodromoran at frequent intervals for chest pain.

Physical examination revealed an obese white male, who complained of pain in the left costal margin. His blood pressure was 160/90, weight 203, respirations 14, pulse 90. The remainder of a complete physical examination revealed that he was edentulous, that he had a markedly increased anterior-posterior diameter of the chest with distant breath sounds over the left lower third posteriorly. He had a regular sinus rhythm on examination of the heart with many premature contractions, and a short systolic murmur at the left apex. Sounds were distant. The abdomen was the site of well healed surgical scars. There was tenderness throughout the abdomen of mild degree. The liver, kidneys, and spleen were not felt. The patient had a small indirect inguinal hernia on the right. Rectal examination revealed a normal sized prostate for his years, with brown stool on the examining finger. The extremities showed absent posterior tibial pulses.

Formulation. Although causalgia secondary to his extensive surgery is a real possibility, the presence of multiple large duodenal ulcers, at least three, which appear active and for which he has been taking large amounts of soda bicarb, could well account for his pain. It would be interesting to see what careful ulcer management could achieve. Of further concern is the huge amount of sodium which the patient has been consuming in the presence of borderline hypertension and coronary artery disease with arrhythmias, and of course his multiple polyposis of the colon.

Hoping this proves helpful, I am

Sincerely,

Reese F. Alsop, M.D.

RFA:ec

* The possibility of a soda induced alkalosis being the cause of his arrhythmia should be considered, and justifying an electrolyte panel including magnesium.

Reese

Alsop-direct

1 hard to isolate one from the other. He gave me a history
2 of having had ulcers in the past which, of course, predis-
3 posed to a recurrence, and he described pain in the
4 epigastrium and along the ribs, but this pain is often a
5 manifestation of a peptic ulcer, I couldn't distinguish the
6 two.

7
8 Q Did he tell you that pain was relieved by
9 soda bicarbonate?

10 A That was my impression.

11 Q You say that was your impression. You mean
12 you could be mistaken as to what he said?

13 A Yes, I could.

14 Q Did he tell you that he was taking
15 Levo-Dromaran, four milligrams every two hours?

16 A Yes, he did.

17 Q Now, if he had pain from ulcers, he wouldn't
18 be taking that kind of medication, would he?

19 A Ulcer pain can be very severe. I've used
20 narcotics in ulcer pain.

21 Q Did he tell you that he had been on this drug
22 for a long period of time?

23 A Yes, he did.

24 Q By the way, isn't that a high dosage, four
25 milligrams of that every two hours?

1 Alsop-direct

2 A Yes, it is.

3 Q By the way, wouldn't that have a tendency to
4 dull the mind of the person who is taking it, or aren't
5 you familiar with that effect?

6 A I've used it a good deal. It's a good
7 narcotic. I used it in terminal cancer patients and I've
8 not been impressed by intellectual clouding as a result
9 of the drug particularly if the person is accustomed to
10 taking it. If you look up in the Physicians' Desk
11 Reference I'm sure it will tell you it would make you woozy,
12 fuzzy-headed. Mr. Cooper gave me a very good history, a
13 very active history, over an hour and a half. He had a
14 good mind and I felt sorry for him, I thought he needed
15 medical care.

16 Q Doctor, would you disagree if I were to tell
17 you that both Dr. Chernick and Dr. Marks, who was, as I
18 say, the neurologist and psychiatrist selected by the
 Government, both testified.

20 THE COURT: Dr. Chernick is your doctor?

21 MR. BLOCK: I may have misspoken. Dr. Chernick
22 was a doctor of Mr. Cooper's selection; Dr. Marks is
23 a doctor of the Government's selection, they both
24 agreed that this narcotic that we are talking about
25 tends to dull the mind and stated that that would

1 Alsop-direct

2 have a deleterious effect on Mr. Cooper's ability
3 to consult with his counsel.

4 MR. SHANLEY: That's inaccurate.

5 MR. BLOCK: I'll read the testimony.

6 THE COURT: It's in essence. It's not
7 verbatim what he said. It had some effect --

8 MR. BLOCK: That's right. Both of them said
9 that.

10 My question is: do you disagree with that
11 answer?

12 A No, it certainly could.

13 Q Isn't it true that the ulcer pain comes and
14 goes?

15 In other words, it's not a constant
16 unremitting pain; isn't that correct?

17 A No, that's not correct. It may be unremitting
18 day and night.

19 Q At all hours of the day and night?

20 A It may be, and sometimes we operate for
21 intractable pain in ulcers.

22 Q Are you aware, Doctor, that Mr. Cooper has
23 been complaining of this pain which has been the subject
24 of consultation with these various neurologists ever since
25 1969; you are aware of that?

Also-direct

A **Yes.**

Q That's what the history shows?

A That's what the history shows.

Q Don't you find it in some way difficult to understand that in all that time nobody ever diagnosed it as coming from ulcers?

A I think it's very surprising, yes.

Q Does that lead you to question the diagnosis of ulcers?

A No, not the present diagnosis of ulcers, but it would lead me to question the assumption that for five years he had intractable pain as a result of ulcers, because if he had pain because of ulcers it would be very likely he would have developed some of their complications, such as hemorrhage, obstruction or intractable pain; yes.

Q Well, Doctor, now we are talking about from 1969 to date, that's 1977, that's eight years, and the record does show, does it not on the reports that were made available to you, that Mr. Cooper has been complaining of intractable pain during that period of time?

A That is the medical history.

Q Do I understand you to say that kind of thing is inconsistent with your diagnosis of ulcers?

A It's --

1 Alsop-direct

2 the years. Sometimes symptoms may have been absent as many
3 as 10 or 15 years but they frequently reoccur."

4 Do you agree with that?

5 A That's well stated. That's a good statement.

6 Q Isn't that inconsistent, Doctor, with no period
7 of remission as far as Mr. Cooper is concerned?

8 A It simply says that Mr. Cooper's ulcer hasn't
9 reached the textbook. There are varieties in clinical
10 entities and there is a common statement made by doctors,
11 which is that you never see the textbook case and the
12 variety that is manifested is something that has to be
13 always kept in mind, but I think that's a first-rate para-
14 graph.

15 Q Even though it could be said, and I guess it's
16 correct, if Mr. Cooper has an ulcer it didn't reach the
17 textbook, that's one thing that I'll agree, but it could be
18 that the diagnosis could be incorrect; it could be?

19 A Not at present.

20 Q You mean that's because of what the radiologist
21 found?

22 A No, that's because of what the radiologist
23 confirmed. There are a host of details. I'm sorry to be
24 difficult about this, but it's a jigsaw puzzle and the
25 pieces have to fall in place including the x-rays and the

1 Alsop-direct

2 described the ulcer crater and pointed them out to me.

3 Q We don't have that in our report.

4 A He discusses scar tissue there, deformity of
5 the duodenal cap is the term I think he used.

6 Q Yes, he does say the duodenal cap itself shows
7 gross deformity and scarring from -- I'm reading from
8 Defendant's Exhibit B -- and scarring from previous
9 ulceration and on the posterior interior wall of the cap
10 a small ulcer crater projects posteriorly and in the same
11 vicinity another ulcer crater projects anteriorly, these
12 are Cushing type ulcers.

13 A How long after our x-ray was the second one
14 taken?

15 THE COURT: A matter of days? Just a couple
16 of days, was it?

17 Q Well, this report -- Doctor Baum's report is
18 dated February 28th, this is dated March 15.

19 Well, it's almost two weeks, isn't it?

20 Q Yes.

21 A Well, I hope Mr. Cooper has been following my
22 therapeutic regimen, this may account for it, but I've seen
23 ulcers healed in that length of time.

24 Q What was your regimen for him?

25 A Antacids and stay away from tea, coffee,

Alsop-direct

alcohol and spices, and frequent small feedings.

Q And that could clear up these three --

A In two weeks -- I don't think it could clear them up but it could make them less apparent.

Q They could be missed?

A I'm very puzzled.

Q You are puzzled?

A Yes, but I've seen ulcers healed in two weeks.

Q Well, if the ulcers have healed -- let's assume for the sake of this moment that he had ulcers and they healed, and that's why they didn't show up on March 15th. Let's assume that. And let's further assume that Mr. Cooper is still complaining about intractable pain in the area that I pointed out to you, in the chest, in the ribs toward the back; would that then lead you to change your view as to his ability to stand trial, that he does have intractable pain not attributable to ulcers?

A If I were satisfied that the ulcers were completely healed and that he still had intractable pain, I would certainly feel -- and no longer required aklalai or antacids I would certainly think there would be some other entity accounting for his pain.

Q Then we get back to the situation where you would not be in disagreement with Doctor Chernick and Doctor

3/23/77 Hearing

83A

Also-direct

Marks?

A I still feel that there are -- there is another item to be -- first of all, let me say I'm not convinced that the ulcers are healed.

Q We are making that assumption.

A If you want to assume that they are healed, then one has the problem of his metabolic alkalosis. I want to know whether he's still taking two boxes of soda bicarbonate; that couldn't affect his heart.

Q We are not talking about his heart at this point.

A We are talking about his ability to stand trial.

Q Let me tell you what I'm focusing on. The heart is a separate thing and I'll come to that. What we are focusing on now, here's a man who is suffering from intractable pain, apparently agonizing and he's taking a variety of drugs including -- and I have a list of them, including levo-dromaran, the 4 milligrams every 2 hours.

THE COURT: I think you have to put the question to the Doctor, assuming.

Q Yes, assuming he takes 100 milligrams of hydretone, that's for high blood pressure, and these are daily doses, and he takes two doses of seconal, he takes

Alsop-direct

two doses of tylenol every two hours; he takes K-Lite potassium supplement daily; he takes endoral, 60 milligrams a day, and the endoral is for coronary disease; correct?

A And high blood pressure.

Q And the tylenol is sort of like a tranquilizer?

A Pain killer.

Q The second is to help him sleep; is that right?

A Yes.

Q He takes ~~dox~~oxin (phonetic) 25 bw.

A .25 milligrams a day.

Q And that is for the control of fibrillation condition that he has?

A The combination.

Q Right. And as I understand it, the potassium chloride, that is the K-Lite offset -- so he's a walking pharmaceutical store. And as I say on the assumption that we are talking about, that he takes all this medication, assume that he suffers intractable agonizing pain, do you think that he could sit in a courtroom and consult with his counsel and help in his defense, that's what it really comes down to.

A Assuming that he has intractable pain, and assuming that his ulcer is completely healed and that he

Alsop-direct

still requires the degree of medication you delineated, I think it's fair to say that he would have trouble with his defense.

Q And actually none of this medication that he takes has anything to do with an ulcer condition, it's all unrelated?

A Sedation is one of the routine prescriptions for ulcers and secondly to help him sleep; the tylenol would help the ulcer pain; particularly it's customary to give some sedation to people who are very tense and have an ulcer.

Q All right. Is there anything, sir, to the belief that it is tall, thin people who suffer from ulcers rather than persons who are somewhat inclined to obesity, as Mr. Cooper is?

A : Yes, the tall, thin Abe Lincoln type is more prone to ulcers, but by the same token, patients with emphysema are also prone to ulcers. Mr. Cooper has a --

Q You didn't say anything about emphysema in your report, did you?

A No. I didn't want to label the man with too much -- distant breath sounds over the lower third posteriorly which are findings consistent with a motor, or very small amount of emphysema.

Q Should it be that that condition is attributable

Alsop-direct

1 diagnostic of duodenal ulcer as far as three board-
2 certified radiologists were concerned had no symptoms
3 at all suggestive of duodenal ulcer."
4

5 A In other words, the ulcers were there without
6 any symptoms, which is what I described before, the silent
7 ulcer. I told you that I had a patient who hemorrhaged from
8 an ulcer without any symptoms at all.

9 THE COURT: Isn't that 29 per cent of 8 per cent?

10 MR. BLOCK: 29 per cent of patients with --

11 THE COURT: And only 8 per cent -- says 29
12 per cent of 8 per cent.

13 Q In any event, doesn't it indicate in your
14 opinion that the radiologists were wrong?

15 A No. That was the point I wanted to make.

16 Q I see. Just one second.

17 I must come back to this, Doctor. You said you
18 didn't agree with me when I said when we got to the point of
19 suggesting that there could be two pains, right?

20 A I am sure there could be two pains.

21 Q Now, if we say one pain comes -- if we assume
22 that your radiologist is right and that Mr. Cooper's
23 radiologist is either wrong or there was a drastic improvement
24 as a result of the treatment which you prescribed, you know in
25 the two-week period, but we are assuming that he does have an

Alsop-direct

1
2 ulcer or three ulcers, as you say, but if we assume that he
3 has the other pain, pain No. 2 causing intractable pain in
4 this area of the left chest towards the back which Dr. Chernick
5 and Marks talked about and said they were satisfied about
6 objectively, then what I am asking you is whether you agree
7 that he should not be put on trial in light of that because
8 that was a conclusion of both Dr. Marks and Chernick, both
9 agreed that it wouldn't endanger his life.

10 MR. SHANLEY: Objection.

11 THE COURT: I understand what Chernick and
12 Marks said.

13 MR. BLOCK: I want the doctor to know what I
14 said.

15 THE COURT: You slightly overstated it. He
16 read it, too.

17 Q All I'm asking is if we say that there are two
18 pains, we make that assumption, then I ask you if you didn't
19 agree with the evaluation of Dr. Marks and Chernick and you
20 said you didn't, I would like to know why.

21 A Perhaps it's simply a question of semantics.
22 If one assumes that I am right as far as the ulcer is
23 concerned, and also assume that the neurologists is right in
24 their contention, we have two pains; and if those two pains
25 are going to continue without amelioration, one could say that

Also-direct

this would be a very real hardship for the patient in his defense, but if one of the pains can be alleviated, as I strongly suspect, assuming all these things, then one might argue that the patient could well manage his defense. We are making a lot of assumptions.

Q I see what you are saying. We are talking about pain No. 2 emanating, trouble with the ribs, and we have seen documentation of that pain going back to 1969 and causing this man a great deal of pain.

A I think the confusion, you know what I think the confusion is: It's very hard for you, me and very hard for Mr. Cooper. The truth of the matter is one can't distinguish with the nicety that one would like to between the two pains. I would like to assume the neurologist is correct, I would like to assume my roentgenologist and I are correct, but it's very hard to make a very clean-cut distinction between these two pain entities because they are both relatively close geographically and we know that there is a tremendous variation in the pain pattern of ulcers, and I am sure any neurologist would agree there is variation in the pain of causalgia to put one thing in one department, put one thing in the other department. My thing is to clear up the ulcer thing completely and then see how his causalgia responds or doesn't respond. Is that logical?

3/23/77 Hearing

90 A

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FRED C. DI BLASIO, M. D.

ADMINISTRATION

WILLETS H. SHOTWELL

April 18, 1977

Hon. Thomas C. Platt
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

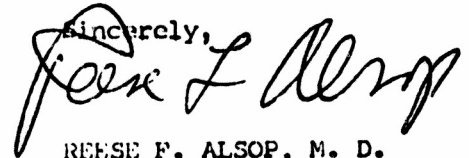
Dear Judge Platt:

As you can see from the accompanying medical summary, Mr. William Cooper presented himself to my office today, April 18th, for further followup of his medical ills. He describes some improvement in his digestive symptoms but stated that his causalgia was essentially the same in spite of 4 mgms. of Levo-Dromoran every two hours.

Re-examination of Mr. Cooper revealed no new findings, and I am still of the conviction that there is no reason why he cannot defend himself in court or consult in a satisfactory manner with his attorney, provided adequate and careful medical supervision of his problems is maintained.

Hoping this proves helpful, I am

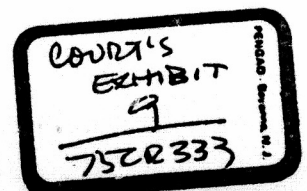
Sincerely,



REESE F. ALSOP, M. D.

RFA:mbt
enc.

91A



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DULANEY GLEN, M. D.
HACHIRO NAKAMURA, M. D.
GERALD J. CORDANI, M. D.

OBSTETRICS AND GYNECOLOGY

DAVID E. WARDEN, M. D., F.A.C.S.
DANIEL W. WILBUR, M. D., F.A.C.S.
MOLLACE D. JACKSON, M.D.

GENERAL AND THORACIC SURGERY

ALFRED A. AZZONI, M. D., F.A.C.S.
HARRY J. MAYER, M. D., F.A.C.S.
LAWRENCE BRICKMAN, M. D.

ORTHOPAEDIC SURGERY

VINCENT J. MORIARTY, M. D., F.A.C.S.
SPYROS KARAS, M. D., F.A.C.S.
EDOUARD KAMHI, M. D.

OPHTHALMOLOGY

FRANCIS C. KEIL, M. D., F.A.C.S.
DAVID A. PAGE, M. D., F.A.C.S.
IRENE N. LLOVERA, M.D., F.A.C.S., F.A.C.S.(C)

EAR, NOSE AND THROAT

ANTHONY V. B. BOLOGNESI, M. D., F.A.C.S.
LAWRENCE A. MAZZARELLA, M.D.

PEDIATRICS

PAUL S. STRONG, M. D., F.A.A.P.
WILLIAM C. IVINS, JR., M. D., F.A.A.P.
THURMAN B. GIVAN, JR., M. D., F.A.A.P.
PHILIP W. H. ESKE, M. D., F.A.A.P.

RADIOLOGY

JOSEPH P. ARCOMANO, M. D., F.A.C.R.
ALAN E. BAUM, M. D., F.A.C.R.

UROLOGY

FRED C. DI BLASIO, M. D.

ADMINISTRATION

WILLETS H. SHOTWELL

April 18, 1977

Dr. Henry Mednick
50 Hempstead Turnpike
Lynbrook, New York 11563

Re: Mr. William Cooper

Dear Dr. Mednick:

I've re-examined Mr. William Cooper April 18, 1977 as a followup to my original evaluation, reported to you on March 7th of this year.

Mr. Cooper reports some vague improvement in his digestion symptoms, but states that his subjective complaint of causalgia remains unabated in spite of 4 mgms. of Lysol-Hormoran every two hours. He has apparently gone to very considerable lengths to challenge the diagnosis of duodenal ulcer. He brings in reports from a Dr. Lawrence Ross and a Dr. Harry Naldich. In both of these roentgenological reports, acknowledgement of the deformity of the duodenal bulb is clear, but both men surprisingly stress the absence of tenderness and/or postprandial stress or relief by the ingestion of food. This, in a patient who is on apparently huge doses of a narcotic which would successfully drown out the usual symptomatology and findings.

Physical examination revealed a lucid, pleasant, obese white male who's in good contact, with a blood pressure of 180/80, a pulse rate of 80 with a ventricular rate of 90, a deficit of 10. His respiratory rate was 14. His chest was as previously described, and examination of his heart showed a regular sinus rhythm with many premature contractions. There was no edema of the ankles.

Formulation: I have nothing to add to my summary of March 7th which is in your hands. Certainly, I am sure that you will agree weight loss and careful supervision of his cardiovascular system, with continued management of peptic disease, are all indicated as are the removal of his allowed polyps.

cont'd.

THE NORTH SHORE MEDICAL GROUP

RE: [REDACTED]

Dr. Cooper does not impress me as a man who is unable to deal with his lawyer or give testimony in spite of the multitude of his ills.

Hoping this proves helpful, I am

Sincerely,

REESE F. ALSOP, M. D.

RE: [REDACTED]

LAWRENCE R. ROSS, M.D., P.C.
206 E. 30TH STREET
NEW YORK, N. Y. 10016
TELEPHONE 686-2220

April 6, 1977

LAWRENCE R. ROSS, M.D., F.C.C.P.

Frederick H. Block, Esq.
919 Third Avenue
NYC, NY 10022

Dear Mr. Block:

At the request of Mr. William Cooper I have taken his history as it relates to his gastrointestinal tract, and I have reviewed the upper GI series, taken on March 14th and March 21st, with particular attention paid to the lower esophagus, stomach and duodenum.

Mr. Cooper had a repair of a hiatus hernia in 1969 and a pyloroplasty and vagotomy during the same procedure. The patient presents with a classic history of peptic esophagitis which apparently is secondary to a reflux from a patulous esophago-gastric junction, proven during x-ray studies. He takes frequent doses of antacids to relieve this discomfort which is located primarily in the substernal area, and is non-radiating. He has no symptoms which can be construed as being due to a peptic ulcer. In particular, the patient does not experience pain occurring prior to meals, there is no epigastric location of the heartburn type of pain, and indeed the pain is not relieved in particular by the ingestion of food. There is no tenderness located over the epigastrium. The x-rays themselves reveal a clover-leaf deformity of the duodenal bulb and on several films there is what can be construed as a filling

LAWRENCE R. ROSS, M.D., P.C.
206 E. 30TH STREET
NEW YORK, N. Y. 10016
—
TELEPHONE 686-2220

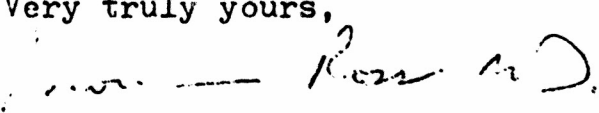
LAWRENCE R. ROSS, M.D., F.C.C.P.

defect in the bulb suggestive of a small polypoid mass. There is no definite evidence of a duodenal ulcer; the clover leaf deformity which is present is indicative of scarring secondary to old "burned out" ulcer disease, but with no evidence of active ulceration.

It is my opinion that Mr. Cooper suffers from peptic esophagitis and has evidence for having had active duodenal ulcer disease in the distant past. Neither of these entities can in any way be construed as being related to the almost constant pain and tenderness which he experiences in the left posterior axillary region over the rib cage. Neither peptic ulcer disease nor peptic esophagitis causes a patient to experience pain in the area where it is experienced by Mr. Cooper.

Should you require any additional information I would be happy to furnish it.

Very truly yours,


Lawrence Ross, M.D.

LAWRENCE R. ROSS, M.D., F.C.
206 E. 30TH STREET
NEW YORK, N. Y. 10016
TELEPHONE 686-2220

April 28, 1977

LAWRENCE R. ROSS, M.D., F.C.C.P.

Mr. Frederick H. Block, Esq.
919 Third Avenue
NYC, NY 10022

Re: William Cooper

Dear Mr. Block:

I have reviewed in detail the medical reports of Dr. Richard Hamilton, Dr. Harry Naidich, both Radiologists, and Dr. Allen Baum. I have also reviewed the neurological reports of Dr. Arthur Battista, Dr. Norman Chernik, and Dr. Joseph Ranschoff. In addition, I, myself, have evaluated Mr. Cooper from both gastro-intestinal & neurologic bases.

There is no doubt that Mr. Cooper has suffered from chronic peptic ulcer disease in the past, nor is there any doubt that Mr. Cooper suffers from intractable pain, poorly relieved by analgesics, including morphine derivatives, at the present time. This pain is due to a post-thoracotomy thoracic root syndrome, entirely unrelated to his gastro-intestinal disease.

Mr. Cooper is unable to adequately participate in his defense, and stand trial, since he is in constant, intractable pain and is on continuous medication with morphine derivatives as well.

LAWRENCE R. ROSS, M.D., F.C.
206 E. 30TH STREET
NEW YORK, N. Y. 10018
TELEPHONE 686.2220

LAWRENCE R. ROSS, M.D., F.C.C.P.

There is great doubt as to whether medical science would be in any way able to alleviate Mr. Cooper's problems. Many therapeutic modalities have been utilized since 1969, with no improvement of either a subjective or objective nature.

Should you require any additional information, I would be happy to furnish it.

Very truly yours,


Lawrence Ross, M.D.
(Fellow, American College
of Chest Physicians)

LRR: bkg

MEMORIAL SLOAN-KETTERING CANCER CENTER

1275 YORK AVENUE, NEW YORK, NEW YORK 10021

(212) 878-3000

April 27, 1977

Frederick H. Block, Esq.
919 Third Avenue
New York, New York 10021

Re: William Cooper

Dear Mr. Block:

In response to your request, I have reviewed the medical report of Dr. Reese F. Alsop re: Mr. William Cooper.

Dr. Alsop has concluded that the intractable pain which Mr. Cooper suffers from is due to three large duodenal ulcers. This is in direct contradiction to my own as well as other expert witness testimony which has been outlined to the court previously. I would like to point out several discrepancies in Dr. Alsop's conclusion. First of all, Dr. Alsop apparently has ignored the temporal and anatomic profile of Mr. Cooper's complaints. Onset of the pain immediately followed thoracic surgery in 1969. Symptoms have continued unabated from that time to the present. The pain is aggravated by postural changes. There is marked tenderness along the T₆ - T₇ dermatomes overlying the site of the surgical incision. These points outline an anatomic as well as temporal profile which would make it inconceivable on a neuro-physiologic basis that Mr. Cooper's intractable rib pain is due to ulcer disease. In support of this Mr. Cooper has subsequently been examined by additional experts in the field of neurosurgery. He was examined by Dr. Arthur F. Battista, Professor of Neurosurgery, New York University, on April 14, 1977. Dr. Battista's report notes that Mr. Cooper's history and examination is consistent with intercostal neuralgic like pain syndrome which is related in time to the operative procedure in 1969. He further points out that this type of pain is extremely difficult to treat effectively. The patient has also been more recently examined by Dr. Joseph Ransohoff, Professor of Neurosurgery, New York University. I do not have Dr. Ransohoff's written report but verbal communication substantiates that there is absolutely no relation to the chronic intractable pain involving Mr. Cooper's left rib cage to any possible abdominal process.

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MEMORIAL SLOAN-KETTERING CANCER CENTER

1275 YORK AVENUE, NEW YORK, NEW YORK 10021

(212) 879-3000



April 27, 1977

I would also like to take this opportunity to point out that Dr. Alsop's report to the court surprisingly failed to mention a neurologic evaluation even to the extent that he failed to note the presence or absence of tenderness of the involved rib cage or the presence or absence of the hemisensory deficit which is a prominent feature of the neuralgic syndrome which he suffers from. In the absence of their mention, I can only conclude that that aspect of the examination was not performed. It is therefore even more indefensible for a conclusion to be drawn discounting the neurogenic origin of Mr. Cooper's complaint.

It is also important to emphasize that Dr. Alsop's conclusion is largely if not totally based upon the x-ray report provided to him by Dr. Allen E. Baum, who performed the radiologic evaluation of Mr. Cooper upon Dr. Alsop's request. Dr. Baum reported that there was deformity of the pyloric canal and duodenal cap with marked scarring from previous ulcer disease and in addition there were two ulcers immediately adjacent to each other, one being located on the inferior-posterior wall of the duodenal cap. Dr. Baum notes that the ulcer on the inferior-posterior wall of the duodenal cap was small and did not note the size of the ulcer adjacent to it. He does not make mention of a third active ulcer in that report. It must be emphasized to the court that two other consultant radiologists have differed from the opinion provided by Dr. Baum to Dr. Reese Alsop. Dr. Harry Nadick performed an upper gastrointestinal tract barium study two weeks following the examination by Dr. Baum and specifically concentrated on the area in question. He also noted distortion in the anatomic contour related to chronic ulcer disease and also raised the question of whether or not there may be a pseudodiverticulum involving that area. He was not able to demonstrate active ulceration. On April 20, 1977 Dr. Richard Hamilton reviewed the x-rays submitted to the court by both Dr. Nadick and Dr. Baum. Dr. Hamilton's report emphasizes a chronically deformed and scarred duodenum without evidence of active ulceration. However, I would like to emphasize that although Dr. Baum's original conclusions regarding active ulcer disease has been challenged by both consultants, I would not like to rest the argument on the presence or absence of active ulcer disease. For as I noted in the above paragraph, even if active ulcer disease is present it would not manifest itself by intractable pain involving the rib cage which is exacerbated by mechanical movement

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NEW YORK UNIVERSITY MEDICAL CENTER

School of Medicine

550 FIRST AVENUE, NEW YORK, N.Y. 10016

AREA 212 679-3200

CABLE ADDRESS: NYUMEDIC

Department of Neurosurgery

April 22, 1977

Lewis Lawrence, M.D.
Lakeville Radiology Association
Lakeville Medical Bldg.
2035 Lakeville Road
New Hyde Park, New York

Re: William Cooper

Dear Lawrence:

I saw Mr. Cooper in the office with interest. This unfortunate gentleman has a classical postthoracotomy thoracic root syndrome. This is one of the well known complications following transthoracic surgery for repair of hiatus hernia or for other thoracic surgical problems. It is strictly unilateral and follows a classical root distribution. I mention this in view of the fact that some question has been raised as to whether the etiological basis for the pain was that of a gastric or duodenal ulcer. In my opinion, there is no way that a gastric or duodenal ulcer could produce this type of strictly unilateral pain of a classical nerve root distribution. I gather, however, that his G.I. series showed no active ulcer so that the issue is really no longer pertinent.

He has had a number of attempts at pain relieving procedures. My recommendation to him was that he be seen in consultation by Dr. Hubert Rosomoff, Chairman of the Department of Neurosurgery at the University of Miami, Jackson Memorial Hospital. Dr. Rosomoff is the world authority on the use of percutaneous radio frequency chordotomy. I am fully convinced from my own experience that thoracic root section would not relieve his problem and it would be my feeling that Dr. Rosomoff who has had very extensive experience might feel that a simple radio frequency lesion could offer him good relief.

I hope these recommendations meet with your approval.

Very sincerely,

101A

Joseph Rosomoff, M.D.
JR:lc

VALLACH

STATE OF NEW YORK)
 : SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 27 day of Oct. 1977 deponent served the within *Append 7* upon

U.S. Atty. Est. Dist. of NY and
Sara Criscitelli,

attorney's) for

Appellee

In this action, at

225 Cadman Plaza East, Brooklyn, NY and
c/o George Gilinsky, Box 899, Ben Franklin Station, Washington, D.C. 20044

the address(es) designated by said attorney(s) for that purpose by depositing
2 copies of same enclosed in a postpaid properly addressed wrapper, in an
official depository under the exclusive care and custody of the United States
post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this 27 day
of Oct. , 1977


WILLIAM BAILEY

Notary Public, State of New York
No. 43-0132945

Qualified in Richmond County
Commission Expires March 30, 1978

